

Applicant Details

First Name	Jim
Middle Initial	E
Last Name	Davidson
Citizenship Status	U. S. Citizen
Email Address	jedavidson@wm.edu
Address	<div><div>Address</div><div>Street</div><div>706 South Henry Street, Apt. 1</div><div>City</div><div>Williamsburg</div><div>State/Territory</div><div>Virginia</div><div>Zip</div><div>23185</div><div>Country</div><div>United States</div></div>
Contact Phone Number	4843667223

Applicant Education

BA/BS From	Pennsylvania State University-University Park
Date of BA/BS	May 2020
JD/LLB From	William & Mary Law School
	http://law.wm.edu
Date of JD/LLB	May 20, 2024
Class Rank	15%
Law Review/Journal	Yes
Journal(s)	William & Mary Environmental Law & Policy Review
Moot Court Experience	Yes
Moot Court Name(s)	William & Mary Law School Moot Court Team

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Andrews, Elizabeth
eaandrews@wm.edu
757-221-1078

Barna, Lindsay
ldbarna@wm.edu
757-221-1855

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jim Davidson
706 S. Henry St., Apt. 1
Williamsburg, Virginia 23185
484-366-7223
jedavidson@wm.edu

June 12, 2023

The Honorable Juan R. Sanchez
Chief Judge
United States District Court for the Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez:

I am a rising third-year student at William & Mary Law School seeking a judicial clerkship in your chambers for the 2024-2025 term. I am ranked in the top 12 percent of my class, serve as an Articles Editor for the *William & Mary Environmental Law and Policy Review*, and have won three individual awards as a member of the nationally ranked William & Mary Moot Court Team. I wish to clerk in your chambers because I plan to return to Pennsylvania to establish my legal career and practice public interest litigation after law school.

My extracurricular experiences have prepared me to serve as a judicial clerk. As an Articles Editor for the *William & Mary Environmental Law and Policy Review*, I manage a team of cite-checkers and coordinate with other editors to perform substantial edits of scholarly articles and guide the overall publication process. My responsibilities include conducting an in-depth evaluation of every citation and its source in each assigned article. As a member of the William & Mary Moot Court Team, I have written several appellate briefs on constitutional and criminal law topics. My team's brief on college professors' First Amendment rights ranked in the top five at the American Bar Association (ABA) regional moot court competition last spring. I ranked among the top ten oral advocates at the ABA national moot court tournament.

I worked as an intern for the Chesapeake City Attorney's Office during the summer of 2022, where I drafted memoranda on 42 U.S.C. § 1983, the City's stormwater drainage system, and the qualifications of an expert witness in a case involving the removal of coal ash landfills from Chesapeake. I also drafted a bench brief on Virginia's agritourism laws that required me to survey a relatively unexamined area of state law, compare it to similar laws of other jurisdictions, and create an argument based on my research.

I am sharpening my research and writing skills as an intern at the Southern Environmental Law Center this summer and have drafted several briefs and memos on environmental topics. In the fall, I will write state and federal appellate briefs as a member of the William & Mary Appellate & Supreme Court Clinic.

Enclosed for your consideration are my resume, law school transcript, writing sample, and two letters of recommendation. I would be grateful for the opportunity to interview and further discuss my qualifications for a judicial clerkship in your chambers.

Sincerely,

Jim Davidson

JIM DAVIDSON

706 S. Henry St. Apt. 1 | Williamsburg, Virginia 23185 | jedavidson@wm.edu | 484-366-7223

EDUCATION

William & Mary Law School, Williamsburg, Virginia

J.D. expected, May 2024

G.P.A.: 3.6; Class Rank: 21/175 (Tied)

Honors:

William & Mary Appellate & Supreme Court Clinic

William & Mary Moot Court Team, William B. Spong, Jr. Tournament Justice

2023 American Bar Association NAAC National Tournament Finalist, Top 10 Best Advocate

2023 American Bar Association NAAC Regional Tournament Champion, Top 5 Briefs

2022 William & Mary Intrateam Tournament Best Oralist Award

2022 Moot Court Bushrod Tournament Champion

William & Mary Environmental Law & Policy Review, Articles Editor

Penn State University, Schreyer Honors College, State College, Pennsylvania

B.A., *magna cum laude*, English and History (double major), Spanish (minor), May 2020

G.P.A.: 3.96

Honors:

Phillip Klass Internship Award (Penn State English Department)

Thesis: *"Pamela" in Context: Commentary on Economics, the State of the Anglican Clergy, and Mental Illness*

PUBLICATIONS

Jim Davidson, Student Note, *Preparing for the Flood: Virginia Local Governments' Stormwater Management Liability*, 48 WM. & MARY ENV'T. L. POL'Y REV. (forthcoming 2023-2024).

EXPERIENCE

Southern Environmental Law Center, Charlottesville, Virginia

May to August 2023

Legal Intern: Working with attorneys addressing cases and policy issues concerning the environment.

Virginia Coastal Policy Center, Williamsburg, Virginia

January 2022 to Present

Legal Research Assistant: With a team of undergraduates, drafted a coastal resiliency certificate program for William & Mary students. Edited student white papers on septic regulation in Virginia and no-discharge zones.

Chesapeake City Attorney's Office, Chesapeake, Virginia

May to August 2022

Legal Intern: Wrote legal memoranda and brief drafts on 42 U.S.C. § 1983, expert witness testimony, zoning violations, agritourism, admiralty law, coal ash landfills, and water rights.

World Travel, Inc., Exton, Pennsylvania

June 2019 to August 2021

Inside Sales Coordinator and Marketing Specialist: Wrote company-wide and client-focused emails and statements for executives. Provided support for global sales managers. Managed social media accounts and rebranded the company's vacation travel divisions. Added more than 100 followers in less than four months.

Penn State University English Department, State College, Pennsylvania

September 2018 to May 2020

Research Assistant to Dr. Carla Mulford: Examined the rhetorical impact of Benjamin Franklin's scientific publications overseas. Evaluated primary sources from the early modern period. Searched eighteenth-century publications for references to Franklin's research. Translated Spanish sources into English.

Onward State, State College, Pennsylvania

February 2017 to May 2020

Senior Editor: Wrote longform posts on historical and contemporary topics (303 stories in total). Posted on social media channels to more than 150,000 followers. Edited features and news articles nightly. Reviewed local restaurants and films. Covered breaking news, State College Borough Council, and local legal issues.



WILLIAM & MARY
LAW SCHOOL
OFFICE OF CAREER SERVICES

Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

Transcript Data	
STUDENT INFORMATION	
Name :	James E. Davidson
Curriculum Information	
Current Program	
Juris Doctor	
College:	School of Law
Major and Department:	Law, Law
***Transcript type:WEB is NOT Official ***	
DEGREES AWARDED	
Sought: Juris Doctor	Degree Date:
Curriculum Information	
Primary Degree	

PAGE 2 OF 4

College:	School of Law					
Major:	Law					
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Institution:	13.000	13.000	13.000	11.000	39.50	3.59

INSTITUTION CREDIT [-Top-](#)
Term: Fall 2021

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R		
LAW	101	LW	Criminal Law	A	4.000	16.00			
LAW	102	LW	Civil Procedure	B	4.000	12.00			
LAW	107	LW	Torts	B+	4.000	13.20			
LAW	130	LW	Legal Research & Writing I	B+	2.000	6.60			
LAW	131	LW	Lawyering Skills I	H	1.000	0.00			
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				15.000	15.000	15.000	14.000	47.80	3.41
Cumulative:				15.000	15.000	15.000	14.000	47.80	3.41

Unofficial Transcript

Term: Spring 2022

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	A-	4.000	14.80	
LAW	109	LW	Constitutional Law	A-	4.000	14.80	
LAW	110	LW	Contracts	A-	4.000	14.80	
LAW	132	LW	Legal Research & Writing II	A-	2.000	7.40	
LAW	133	LW	Lawyering Skills II	H	2.000	0.00	

PAGE 3 OF 4

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	14.000	51.80	3.70
Cumulative:	31.000	31.000	31.000	28.000	99.60	3.55

Unofficial Transcript

Term: Fall 2022

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	B+	2.000	6.60	
LAW	339	LW	Natural Resources Law	A	3.000	12.00	
LAW	401	LW	Crim Proc I (Investigation)	A-	3.000	11.10	
LAW	593	LW	Disaster Law & Ldrship Seminar	A-	3.000	11.10	
LAW	730	LW	Advanced Brief Writing	A-	2.000	7.40	
LAW	762	LW	W&M Environ Law/Policy Review	P	1.000	0.00	

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	14.000	14.000	14.000	13.000	48.20	3.70
Cumulative:	45.000	45.000	45.000	41.000	147.80	3.60

Unofficial Transcript

Term: Spring 2023

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	309	LW	Evidence	A-	3.000	11.10	
LAW	412	LW	Legis/Statutory Interpretation	A-	3.000	11.10	
LAW	424	LW	Environmental Law	A-	2.000	7.40	
LAW	477	LW	Section 1983 Litigation	B+	3.000	9.90	
LAW	709	LW	Moot Court ILR	H	1.000	0.00	
LAW	762	LW	W&M Environ Law/Policy Review	P	1.000	0.00	

PAGE 4 OF 4

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	13.000	13.000	13.000	11.000	39.50	3.59
Cumulative:	58.000	58.000	58.000	52.000	187.30	3.60

Unofficial Transcript

TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) [-Top-](#)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	58.000	58.000	58.000	52.000	187.30	3.60
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	58.000	58.000	58.000	52.000	187.30	3.60

Unofficial Transcript

COURSES IN PROGRESS [-Top-](#)**Term: Fall 2023**

Subject	Course	Level	Title	Credit Hours
LAW	305	LW	Trust and Estates	3.000
LAW	400	LW	First Amend-Free Speech & Pres	3.000
LAW	482	LW	The Clean Water Act	2.000
LAW	762	LW	W&M Environ Law/Policy STAFF	2.000
LAW	788	LW	Appellate & Supr Ct Clinic I	3.000

Elizabeth Armistead Andrews
Professor of the Practice of Law
and Director, Virginia Coastal Policy Center

William & Mary Law School
Virginia Coastal Policy Center
P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-1078
Email: eaandrews@wm.edu

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Recommendation for Jim Davidson

Dear Judge Sanchez:

I am writing to recommend one of my student Research Assistants, Jim Davidson, for your clerkship position.

Jim has done an excellent job working on various projects for me. He worked very well with a team of students to organize and conduct research on university certificate programs and draft a report with recommendations for developing a coastal resiliency certificate program. He also assisted me with finalizing a white paper on septic challenges in the face of increasing flooding and policy recommendations for addressing those challenges in Virginia. Jim was of immense help with that important project that will be shared with state agencies and other stakeholders. He researched some quite technical issues and did an exceptional job conveying them in an easy-to-understand form for use by non-scientists.

In addition to his excellent writing skills, Jim has exceptional organizational skills and the ability to work independently. He meets weekly with me, my staff, and the other Research Assistants to discuss projects, and then works on his own to complete his assigned tasks in a timely fashion. His maturity is reflected in his composure and confidence as he works on the projects that I have assigned to him. I believe that his experience and abilities, as well as his affable nature, would serve him well as a Clerk for you. I am confident that he would do an excellent job and highly recommend him to you.

Please let me know if I may be of further assistance.

Sincerely,

/s/

Elizabeth Armistead Andrews, Director

Elizabeth Andrews - eaandrews@wm.edu - 757-221-1078

**William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795**

**Lindsay Barna
Adjunct Professor, Legal Research & Writing
ldbarna@wm.edu
Phone: 757-221-1855**

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Re: Recommendation of Jim Davidson for Judicial Clerkship

Dear Judge Sanchez:

I am writing to recommend Jim Davidson for a Judicial Clerkship. Mr. Davidson is a highly capable and bright student. He was one of my writing students during the 2021-2022 academic year. He is not only a good student but would be a great addition to any office.

Mr. Davidson's written work is thoughtful and clear. He is able to analyze and express complex legal issues easily. During his first year of law school, he did very well in my Legal Writing & Research classes. During the first semester, he mastered the basic legal writing concepts and legal analysis quickly and was able to produce a legal memo which included three nuanced legal issues. He went on in the second semester to refine these skills and apply them to persuasive writing, where he crafted a written legal brief on a number of complex legal issues for his final assignment. During the second semester, he also had the responsibility of conducting all of his own research, which he managed easily. He was able to locate sources that were, by the design of the assignment, difficult to find. Mr. Davidson has all of the skills necessary to fulfill all of the duties of a Judicial Clerkship.

While Mr. Davidson has strong skills as a student, he also works well with others and would be an asset to any office. I observed him working with many of his classmates throughout his first year of law school. He was always an active and productive member of any group assignment but allowed room for others to voice their opinions. He emerged as a leader within his law school writing section and was a student that could be counted on to follow through on any number of complex projects.

Mr. Davidson is well qualified for a Judicial Clerkship position. His writing and research skills are excellent, but he is also conscientious, responsible, and works well with others. I recommend Mr. Davidson for a Judicial Clerkship position. Please contact me if you have any questions or would like to discuss Mr. Davidson in more detail.

Sincerely,

/s/

Lindsay Barna
Adjunct Professor
Legal Research & Writing
William & Mary Law School
ldbarna@wm.edu

Lindsay Barna - ldbarna@wm.edu - 757-221-1855

JIM DAVIDSON

706 S. Henry Street, Apt. 1 | Williamsburg, VA 23185
484-366-7223 | jedavidson@wm.edu

WRITING SAMPLE

The following document is part of my moot court team's American Bar Association National Appellate Advocacy Competition (NAAC) brief. The brief was ranked in the top five at the NAAC regional competition and helped my team reach the final of the NAAC national competition. I wrote the attached section of the brief alone. In the fictional fact pattern at issue, a public college professor (Smith) filed a First Amendment compelled speech claim against his employers (Westland Community College (WCC)). The professor alleged that the employers unlawfully compelled him to speak when they forced him to recite the school's land acknowledgement statement and community values verbatim while refusing to allow him to present his own views.

My team represented the professor in his appeal to the U.S. Supreme Court from the fictional Thirteenth Circuit. My section of the brief answers the following issue presented by the Court: Whether a public college's ability to compel an instructor to make in-class statements that endorse a viewpoint contrary to the instructor's own academic opinions is limited by the First Amendment. The selection below contains the entire first half of my argument and the introduction to the second half.

II. PUBLIC COLLEGES RETAIN LIMITED AUTHORITY TO REGULATE THE SPEECH OF THEIR INSTRUCTORS, AND COURTS SHOULD RELY ON THE *PICKERING* TEST TO DEFINE THIS LIMITED AUTHORITY.

This Court has long recognized that “compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, _____ U.S. _____; 138 S. Ct. 2448, 2463 (2018). When the government forces an individual to endorse orthodox views, it violates the one possible “fixed star in our constitutional constellation.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). WCC ignored the First Amendment’s robust protection against compelled speech and reached far beyond its constitutional authority when it forced Smith to include the Land Acknowledgement Statement and NSE bullet points in his syllabus and lectures without a disclaimer or other accommodation. R. at 10.

Smith did not speak for the government through his lectures in the classroom, yet he was required to endorse WCC’s statements as if they constituted Smith’s own personal beliefs. Therefore, the Court should find that a public college’s ability to compel the speech of its instructors is limited by the First Amendment. Because the WCC policy at issue affected a small group of professors and Smith spoke as a government employee on a matter of public concern, the Court should rely on the *Pickering* balancing test to determine the limits of a public college’s ability to compel the speech of its professors.

A. WCC’s Rationale For Compelling Smith’s In-Class Speech Fails Because The Speech At Issue Was Not Government Speech And Smith Was Required To Affirmatively Endorse WCC’s Statements As His Own Opinions.

Smith’s in-class speech to his students did not constitute government speech, and therefore WCC had limited control over the statements he made as an instructor. WCC argues that it may require Smith to convey the messages contained in its Land Acknowledgement

Statement and NSE community value bullet points because his speech as a professor was government speech. R. at 18. However, the historical and contextual understanding of the in-class speech of college professors and the relationship between *Garcetti* and the government-speech doctrine suggests that Smith’s statements did not constitute government speech. *See Garcetti*, 547 U.S. at 425; *Mayer*, 474 F.3d at 480. Additionally, WCC required Smith to relay statements in a way that indicated those statements constituted Smith’s personal beliefs, *see* R. at 10, reaching beyond its limited institutional ability to compel the speech of college professors, *see Barnette*, 319 U.S. at 637.

1. *Smith’s in-class speech did not constitute government speech because the Court in Garcetti declined to extend its course-of-duties rationale to the speech of college professors, and instructor speech in the college classroom has long been considered independent from government speech.*

Smith’s in-class speech to his students did not constitute government speech, and therefore WCC did not have complete control over the statements Smith made in the classroom. WCC argues that it may require Smith to convey the messages contained in its Land Acknowledgement Statement and NSE community value bullet points because his speech as a professor is government speech with the sole purpose of transmitting the college’s desired viewpoints. R. at 18. The Thirteenth Circuit agreed with this categorization, holding that, because a public college is not a viewpoint-neutral body, WCC was “permitted to insist that its employees carry out its program.” R. at 20.

Smith concedes that WCC may compel its professors to utter some “ministerial” speech, such as taking roll at the beginning of class. R. at 18. However, WCC’s actions reached beyond this basic authority. The Thirteenth Circuit’s opinion below and WCC’s argument untenably fuse the *Garcetti* doctrine with the government speech doctrine in a way that ignores *Garcetti*’s explicit refusal to wade into the world of post-secondary education, and the limited application

of the government speech doctrine to the college classroom. R. at 18; 547 U.S. at 425. In short, WCC claims that the government speech doctrine applies to *all* of Smith’s in-class speech because *Garcetti* removed speech pursuant to a public employee’s duties from any discussion of balancing government interest in smooth operation with an employee’s interest in speaking. R. at 20 (“[W]hen the issue is a government ordering an employee to perform core job duties, the *Pickering* test does not apply. There is no balancing. WCC was in the heart of its managerial discretion.”); *see* 547 U.S. at 426. Therefore, WCC argues, it may regulate every word of its post-secondary educators’ speech as speech that conveys whatever message the university wishes to mandate. R. at 20; *see Garcetti*, 547 U.S. at 425.

This is an erroneous application of the government speech doctrine to an area the Court never meant it to reach. The doctrine applies to situations in which the government explicitly speaks to “promote a program, to espouse a policy, or to take a position. In doing so, it represents its citizens and it carries out its duties on their behalf,” *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 208 (2015), but it does not apply so neatly to cases that involve the intricate dynamics of a college classroom. Of course, if the government was forced to include opinions that opposed its position every time it spoke, “government would not work.” *Id.* To apply this blanket doctrine to higher education, however, is to miss the Court’s extensive efforts to create a separate niche in First Amendment doctrine for professorial speech. *See Garcetti*, 547 U.S. at 425.

The cases the Thirteenth Circuit cites in support of its application of the government-speech doctrine do not address this distinction. *Walker* discusses the government’s authority to deny an interest group’s application to commission a specialty license plate, with the Court holding that “Texas maintains control of the messages conveyed on its specialty plates.” 576

U.S. at 213. In *Agency for International Development v. Alliance for Open Society International, Inc.*, the Court held that the government could not condition its interest-group funding decision on the group's affirmation "of a belief that by its nature cannot be confined within the scope of the Government program." 570 U.S. 205, 221 (2013). Further, the Fifth Circuit found public school textbooks in *Chiras v. Miller* to be government speech immune from the neutrality requirement. 432 F.3d 606, 620 (5th Cir. 2005). The *Walker* Court specifically recognized that "government statements (and government actions and programs that take the form of speech) do not normally trigger the First Amendment rules designed to protect the marketplace of ideas." 576 U.S. at 207. WCC and the Thirteenth Circuit, however, brush past this crucial caveat and fail to see its connection to this Court's admonishment that "[t]he classroom is peculiarly the 'marketplace of ideas'" that the First Amendment is designed to protect. *Keyishian*, 385 U.S. at 603.

Nevertheless, WCC attempts to label Smith's instructional in-class speech as the direct speech of his employer, and therefore open to compulsion, using *Garcetti*. R. at 18. WCC's connection between *Garcetti* and the government-speech doctrine is unworkable because of *Garcetti*'s explicit refusal to apply its principal holding to the world of post-secondary academia. See 547 U.S. at 425. The State of Florida attempted a similar argument in defense of its recently passed Stop W.O.K.E. Act, which "officially bans professors from expressing disfavored viewpoints in university classrooms while permitting unfettered expression of the opposite viewpoints." *Pernell v. Fla. Bd. of Governors of State Univ. Sys.*, No. 22CV304, 2022 WL 16985720, at *1 (N.D. Fla. Nov. 17, 2022), *appeal filed*. Florida argued that a state may compel public university professors to remain silent on certain topics because *Garcetti* left unprotected a public employee's speech pursuant to their official duties. *Id.* at *7-*9; see

Garcetti, 547 U.S. at 425. However, as the district court noted in *Pernell*, the Court in *Garcetti* left the speech of college instructors outside the scope of its holding, and several lower courts have refused to extend *Garcetti* to the college classroom in a way that would allow administrators to compel student or instructor speech under the government-speech doctrine. *Pernell*, 2022 WL 16985720, at *7-*9; *Mayer*, 474 F.3d at 480 (“How much room is left for constitutional protection of scholarly viewpoints in post-secondary education was left open in *Garcetti* and *Piggee* and need not be resolved today.”); *Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 343 (6th Cir. 2010) (“*Garcetti*’s caveat offers no refuge to Evans–Marshall. She is not a teacher at a ‘public college[]’ or ‘universit[y]’ and thus falls outside of the group the dissent wished to protect.”). Any attempt to connect the government-speech doctrine to statements made by a college professor via *Garcetti*, therefore, rests on a nonexistent application that this Court has directly refused to make.

In addition, WCC and the Thirteenth Circuit fail to recognize the nuanced difference between a public college’s prescription of its curriculum and its attempt to compel and restrict every utterance that touches on a topic contradictory to that curriculum in class. Of course, it is

the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail the four essential freedoms of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

Sweezy, 354 U.S. at 263 (Frankfurter, J., concurring) (internal quotation marks and citation omitted). However, this general allocation of duty does not extend to the point of policing classroom speech and excluding any competing viewpoints from entering classroom discussion. Even at the high school level, where the content of in-class instruction is more often regulated, this Court recognized that to criminally punish a teacher from expressing views that oppose the

curriculum goes too far. *Epperson v. Arkansas*, 393 U.S. 97, 115–16 (1968) (Stewart, J., concurring). As Justice Stewart noted in his concurring opinion in *Epperson*, a state might mandate that a single language be taught to students in its public schools, but it may not mandate that a teacher cannot teach *about* other languages. *Id.* (“But would a State be constitutionally free to punish a teacher for letting his students know that other languages are also spoken in the world? I think not.”).

Here, Smith was speaking as a college professor in the context of an academic discussion with his students, and in no way attempted to prevent the content of WCC’s required curriculum from reaching his students. R. at 10. Smith merely wished to express his disagreement with WCC’s Land Acknowledgement Statement and engage his class in a broader discussion of two NSE bullet points with which he disagreed. R. at 8, 10. To punish Smith for discussing viewpoints that oppose WCC’s curriculum is akin to punishing a teacher for “letting his students know that other languages are also spoken in the world.” *Epperson*, 393 U.S. at 115-16.

2. *WCC required Smith to convey the institution’s academic beliefs to students in a way that indicated Smith endorsed those opinions as his own.*

WCC compelled Smith to speak in violation of the First Amendment because it required him to convey the academic opinions of the college in a way that suggested he endorsed those opinions. WCC argues that even if the First Amendment imposes a limitation on what a public college may require its instructors to say, WCC did not supersede this limit because it did not require Smith to “affirmatively adopt WCC’s speech as his own.” R. at 21. An examination of the Court’s compelled speech precedent, however, indicates that Smith was forced to utter statements to his students that suggested an “affirmation of a belief and an attitude of mind” in a manner that violates the First Amendment. *Barnette*, 319 U.S. at 633.

This Court has long held that the Constitution’s protection against compelled speech is

paramount, and “involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence.” *Id.* WCC, however, argues that there is an invisible difference between the words one utters and the beliefs they espouse. R. at 21. This Court has made it clear, over the course of decades, that it disagrees, and that even expressive conducts, short of verbal speech, espouse beliefs and messages that may not be altered by government compulsion. *See, e.g., Barnette*, 319 U.S. at 642; *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 580-81 (1995).

For example, in *Barnette*, the Court held that schoolchildren could not be forced to salute the American flag and recite the pledge of allegiance each morning. *See* 319 U.S. at 642. It held that such a compulsory ritual, where individuals are required to recite state-prescribed statements, “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.” *Id.* In *Hurley*, the Court similarly found that parade organizers, in marching to “make some sort of collective point,” could not be forced to alter that message by the government. 515 U.S. at 580-81. In discussing compulsion and First Amendment analysis, the Court has found speech in wearing a black armband in protest to high school, *Tinker*, 393 U.S. at 508-509, displaying a state slogan on a license plate, *Wooley v. Maynard*, 430 U.S. 705, 714 (1977), and the flying of a red flag, *Stromberg v. California*, 283 U.S. 359, 370 (1931).

Regardless of WCC’s control over Smith’s speech as an employee, it makes an unsupported distinction between speech uttered by an individual and that individual’s actual, internal beliefs. R. at 21. The Court’s precedential cases make clear that for the purposes of First Amendment analysis, there is no meaningful way to distinguish what an individual says from what they believe, and that the prohibition against compelled speech exists to validate

“individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.” *Barnette*, 319 U.S. at 637. If the government could justify its attempts to compel speech by claiming that it did not require the speaker to believe what he said, compelled speech would not create such serious concerns.

Here, Smith was affirmatively compelled to make the sort of statements that this Court warned against in *Hurley*, *Barnette*, and *Wooley*: government-endorsed sentences conveying a specific viewpoint that Smith did not wish to express. *See* R. at 10. In requiring Smith to relay these statements without disclaiming his own professional beliefs, WCC is effectively attempting to limit Smith’s speech, and thereby the beliefs he may hold and express. *See* R. at 10; *Barnette*, 319 U.S. at 637. If Smith cannot express his disagreement with these statements, he is effectively endorsing them under the Court’s compelled speech holdings, and WCC is hijacking his First Amendment right to decide what to express, what to endorse, and what to believe. *See* R. at 10; *Pac. Gas & Elec. Co. v. Pub. Utilities Comm’n of Cal.*, 475 U.S. 1, 11 (1986) (“[A]ll speech inherently involves choices of what to say and what to leave unsaid.”).

Additionally, WCC argues, and the Thirteenth Circuit affirms without support, that students will be able to distinguish between what Smith is required to relay and what he personally believes as an academic. R. at 21. However, this argument fails to recognize two important aspects of the speech at issue. First, both instances of compelled speech touch on topics that Smith has dedicated written work and other scholarship to understanding. R. at 5, 10. To suggest that this fact is meaningless, and that students will be able to separate Smith’s own convictions about his areas of study from those mandated by WCC, is to delegitimize the authority of college instructors and to ignore the “ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor.” *Sweezy*, 354 U.S. at 262, (1957)

(Frankfurter, J., concurring). Smith, as a professor, chooses his words carefully, especially when they express his convictions on the topics he knows best. R. at 5, 10. To suggest that students can easily parse what Smith truly believes about important subjects from what he is forced to say is to ask them to read his mind or study the entirety of his scholarship, contextualizing each statement as either administrative or academic. And if students can tell that Smith does not believe in what he is saying, why would a disclaimer of his own beliefs affect the conveyance of WCC's community values? *See* R. at 10.

WCC is asking the Court to hold that Smith's speech can easily be distinguished from his academic beliefs but refusing to let Smith point out that distinction to his students in a simple disclaimer or broadened classroom discussion. *See* R. at 10. According to this Court's previous First Amendment holdings, compelled speech cannot be allowed on the basis of an imaginary dichotomy between speech and internal belief. *See Barnette*, 319 U.S. at 642; *Hurley*, 515 U.S. at 580-81. Therefore, WCC's attempt to compel Smith to endorse the college's views, on the basis that he does not have to believe the values he conveys to his students, violates the First Amendment.

B. The Court Should Apply The *Pickering* Test In Evaluating Smith's Compelled Speech Claim To Determine Whether WCC Reached Beyond Constitutional Limits To Compel Smith's Classroom Speech.

The Court should apply the two-prong *Pickering-Connick* (*Pickering*) test to analyze Smith's claim and determine whether WCC compelled Smith's speech in violation of the First Amendment. This Court and others have historically used the *Pickering* test to determine whether a public employee's speech is protected from government retaliation, restriction, or compulsion. *See Garcetti*, 547 U.S. at 417; *Nicholson v. Gant*, 816 F.2d 591, 599 (11th Cir. 1987) (using the *Pickering* test to evaluate a public employee's compelled speech claim).

As the Thirteenth Circuit recognized, this Court's recent decision in *Janus* muddled the

seemingly straightforward application of the *Pickering* test to public employees' compelled speech claims. R. at 19. In dicta, the Court explained that the *Pickering* test was inadequate in analyzing some compelled speech claims, specifically in a hypothetical modification of the facts of *Connick v. Myers*, 461 U.S. 138, 142 (1983), where an employee is compelled to speak publicly on a matter of private concern. *Janus*, 138 S. Ct. at 2473. Ultimately, the Court refrained from deciding whether *Pickering* "applies at all" to compelled speech and noted that *Pickering* was a "poor fit indeed" for the union speech claim at issue that addressed a law with widespread effect on thousands of employees. *Id.* at 2474. However, the Court went on to apply *Pickering* to the claim to determine whether the speech at issue addressed a matter of public concern. *Id.* at 2477-78.

Before *Janus*, courts generally applied *Pickering* to compelled speech claims. *See Nicholson*, 816 F.2d at 593, 599-600; *see also Gwinnett v. Sw. Fla. Reg'l. Plan. Council*, 407 F. Supp. 3d 1273, 1278 (M.D. Fla. 2019) (finding that "[b]efore *Janus*, courts applied *Pickering* to public employee compelled speech cases with little fanfare."). Although the Court ultimately used *Pickering* after criticizing its applicability, *Janus* left the question of whether to apply *Pickering* to future compelled speech claims unanswered. 138 S. Ct. at 2473.

Despite the reservations the Court expressed in *Janus*, *Pickering* remains an effective test for Smith's compelled speech claim and professors' compelled speech claims generally because the policy at issue does not have a widespread effect on numerous employees and Smith was compelled to speak on matters of public concern. R. at 9-10.

Applicant Details

First Name **Adia**
 Last Name **Davis**
 Citizenship Status **U. S. Citizen**
 Email Address ajd2222@columbia.edu
 Address

Address
Street
155 15th St., 4E
City
Brooklyn
State/Territory
New York
Zip
11215
Country
United States

Contact Phone Number **(336)602-9034**

Applicant Education

BA/BS From **College of William and Mary**
 Date of BA/BS **May 2018**
 JD/LLB From **Columbia University School of Law**
<http://www.law.columbia.edu>
 Date of JD/LLB **May 16, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Columbia Human Rights Law Review, A
 Jailhouse Lawyer's Manual**
 Moot Court **Yes**
 Experience
 Moot Court Name(s) **Thurgood Marshall Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate
Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Shanahan, Colleen
colleen.shanahan@columbia.edu
Schatz, Ben
bschatz@cfal.org
3145704504

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Adia Davis
155 15th Street
Brooklyn, NY 11215
(336) 602-9034
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June 18, 2023

The Honorable Juan R. Sanchez
United States District Court
Eastern District of Pennsylvania
James A. Byrne United States Courthouse
601 Market Street
Philadelphia, PA

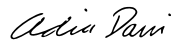
Dear Judge Sanchez:

I am a litigation associate at Gibson, Dunn & Crutcher and a 2022 graduate of Columbia Law School. I write to apply for a clerkship in your chambers beginning in 2024.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from Supervising Attorney Ben Schatz (212 577-2523 ext. 544, bschatz@cfal.org) and Professor Colleen Shanahan (212 854-8030, colleen.shanahan@law.columbia.edu).

Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully,



Adia Davis

ADIA DAVIS

155 15th Street, Brooklyn, NY 11215 • (336) 602-9034 • ajd2222@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D., received May 2022

Honors: James Kent Scholar and Harlan Fisk Stone Scholar; Robert L. Carter Scholarship for exemplary dedication to BLSA and CLS Communities

Activities: Research Assistant, Civil Access to Justice and State Courts, Professor Colleen Shanahan; *Columbia Human Rights Law Review*, *A Jailhouse Lawyer's Manual*, Executive Articles Editor; Columbia Law School High School Law Institute, Co-President; Black Law Students Association, Professional Development Committee Co-Chair; Thurgood Marshall (formerly Frederick Douglass) Moot Court Competition

The College of William & Mary, Williamsburg, VA

B.A., *cum laude* received May 2018

Major: Public Policy

Minor: English

Honors: Pi Sigma Alpha National Government and Political Science Honor Society

Thesis: "Peripheral Voices: Speaking for Others in *Black Like Me* and *To Kill a Mockingbird*"

Activities: Griffin School Partnerships, tutor and classroom assistant; Phi Sigma Pi National Honor Fraternity; Office of Community Engagement, Communications Intern

Study Abroad: The University of Adelaide, Adelaide, Australia, Spring 2017

EXPERIENCE

Gibson, Dunn & Crutcher LLP, New York, NY

Law Clerk (Associate upon Bar Admission)

October 2022–Present

Summer Associate

Summer 2021

Conduct legal research on breach of contract and complex commercial litigation issues, insider trading, and New York long-arm jurisdiction. Draft sections of pleadings including motions to dismiss and an appellate brief. Prepare update for ABA Federal Sentencing Treatise chapter on variances and departures. Work on pro bono projects regarding criminal immigration issues, domestic violence, housing, and police reform. Second-chaired Second Circuit Court of Appeals oral argument.

Center for Appellate Litigation, New York, NY

Semester Extern

September–December 2021

Researched and drafted appellate brief for incarcerated indigent client. Visited and interviewed client in prison. Presented oral argument before the New York Supreme Court, Appellate Division, First Department.

NAACP Legal Defense and Educational Fund, New York, NY

Semester Extern

September–December 2020

Drafted deposition outlines, interrogatories, and other discovery materials for voting rights litigation.

The Public Defender Service for the District of Columbia, Washington, DC

Law Clerk

Summer 2020

Conducted legal research on topics including the Sixth Amendment right to counsel. Drafted motions, including Motion for Compassionate Release. Improved trial advocacy skills through a trial practice program.

Josep Tarradellas Primary School, Madrid, Spain

Language and Culture Assistant

October 2018–June 2019

Taught and provided practice with written and communicative English skills to first-grade students.

BAR ADMISSION: Passed UBE (2022): licensure pending in New York

LANGUAGE SKILLS: Spanish (intermediate)

INTERESTS: Playing tennis, hiking, traveling



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CLS TRANSCRIPT (Unofficial)

04/03/2023 12:58:44

Program: Juris Doctor

Adia J Davis

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Shechtman, Paul	3.0	A
L6655-2	Human Rights Law Review Editorial Board		1.0	CR
L6269-1	International Law	Damrosch, Lori Fisler	4.0	A-
L6776-1	Moot Court Student Judge	Bernhardt, Sophia	1.0	CR
L6333-1	Refugee Law and Policy	Gupta, Anjum	3.0	A
L6685-1	Serv-Unpaid Faculty Research Assistant	Shanahan, Colleen F.	1.0	CR

Total Registered Points: 13.0**Total Earned Points: 13.0**

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6663-1	Ex. Criminal Appeals [Minor Writing Credit - Earned]	Schatz, Ben A.; Zeno, Mark	2.0	A-
L6663-2	Ex. Criminal Appeals - Fieldwork	Schatz, Ben A.; Zeno, Mark	2.0	CR
L6425-1	Federal Courts	Kent, Andrew	4.0	B+
L6655-2	Human Rights Law Review Editorial Board		1.0	CR
L8797-1	S. Social and Legal Regulation of Firearms	Fagan, Jeffrey A.	3.0	A
L6685-1	Serv-Unpaid Faculty Research Assistant	Shanahan, Colleen F.	1.0	CR

Total Registered Points: 13.0**Total Earned Points: 13.0**

Spring 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6241-2	Evidence	Capra, Daniel	4.0	A
L6169-2	Legislation and Regulation	Johnson, Olatunde C.A.	4.0	A-
L6274-3	Professional Responsibility	Gupta, Anjum	2.0	A-
L8288-1	S. Socio-Economic Rights: Theory and Practice	Ahmed, Kayum	2.0	A-

Total Registered Points: 12.0**Total Earned Points: 12.0**

Page 1 of 3

Fall 2020

Course ID	Course Name	Instructor(s)	Points	Final Grade
L8419-1	Abolition: A Social Justice Practicum	Harcourt, Bernard E.; Hoag, Alexis	2.0	A
L8419-2	Abolition: A Social Justice Practicum: Experiential Lab	Harcourt, Bernard E.; Hoag, Alexis	1.0	A
L6231-2	Corporations	Pistor, Katharina	4.0	A-
L6611-1	Ex. Racial Justice	Kleinman, Rachel; Merle, Natasha	2.0	B+
L6611-2	Ex. Racial Justice - Fieldwork	Kleinman, Rachel; Merle, Natasha	3.0	CR
L6675-1	Major Writing Credit	Shanahan, Colleen F.	0.0	CR
L6683-1	Supervised Research Paper	Shanahan, Colleen F.	2.0	CR

Total Registered Points: 14.0**Total Earned Points: 14.0****Spring 2020**

Due to the COVID-19 pandemic, mandatory Credit/Fail grading was in effect for all students for the spring 2020 semester.

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6105-1	Contracts	Scott, Robert	4.0	CR
L6108-1	Criminal Law	Rakoff, Jed	3.0	CR
L6667-1	Frederick Douglass Moot Court	Strauss, Ilene; Yusuf, Temitope K.	0.0	CR
L6369-1	Lawyering for Change	Sturm, Susan P.	3.0	CR
L6121-31	Legal Practice Workshop II	Yusuf, Temitope K.	1.0	CR
L6116-2	Property	Heller, Michael A.	4.0	CR

Total Registered Points: 15.0**Total Earned Points: 15.0****January 2020**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-6	Legal Methods II: Social Justice Advocacy	Franke, Katherine M.	1.0	CR

Total Registered Points: 1.0**Total Earned Points: 1.0****Fall 2019**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-2	Civil Procedure	Cleveland, Sarah	4.0	B+
L6133-2	Constitutional Law	Hamburger, Philip	4.0	B+
L6113-4	Legal Methods	Briffault, Richard	1.0	CR
L6115-5	Legal Practice Workshop I	McCamphill, Amy L.; Newman, Mariana	2.0	P
L6118-2	Torts	Merrill, Thomas W.	4.0	B

Total Registered Points: 15.0**Total Earned Points: 15.0**

Page 2 of 3

Total Registered JD Program Points: 83.0**Total Earned JD Program Points: 83.0****Honors and Prizes**

Academic Year	Honor / Prize	Award Class
2021-22	James Kent Scholar	3L
2020-21	Harlan Fiske Stone	2L

Pro Bono Work

Type	Hours
Mandatory	40.0
Voluntary	108.0

UNOFFICIAL

June 18, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Adia Davis for a clerkship in your chambers. I supervised Adia's major writing project in her second year at Columbia Law School and, based on the strength of her work, invited her to serve as my research assistant in her third year.

Adia's major writing project was a re-writing of the chapter of the Jailhouse Lawyer's Manual concerning tort actions by incarcerated individuals. Adia's research and writing on this project was precise and particularly impressive given the scope of subject matter she mastered and translated for her audience. Adia produced a chapter that, first, educated incarcerated readers about the basic contours of tort doctrine and of constitutional torts. Second, it described common tort actions related to prisons using cases related to medical care, property damage, excessive force, and neglected facilities so that a self-represented litigant could identify whether they had a claim. Third, it explained administrative and court procedures in a way that the reader could pursue their own claim. All of this writing was rigorous, precise, and efficient. What put Adia's efforts over the top was that she then developed checklists to make each step more accessible and ten model pleadings that the reader could fill in and adjust to their jurisdiction. It was a truly impressive effort that reflects the sophistication of Adia's legal analysis and her deep capacity for attuning to her audience in writing.

Based on how impressed I was with Adia's work on her major writing project as a 2L, I invited her to be a research assistant the following year. She performed a variety of projects for me in this role. The most straightforward tasks were finding citations, bluebooking, and proofreading law review articles. Adia was precise, efficient, and accurate in this role.

The more complex tasks involved requests to draft several pages of text concerning particular areas of legal or social science research. I only ask my most competent research assistants to do this kind of work, as it requires sophistication and confidence in research and writing to be able to do this kind of integrated project level at the high level of excellence I need for it to be useful. Adia did truly excellent work in this regard. As an example, I asked her to write 1500 words describing how social scientists, public health researchers, and economists use the phrase "social need" and the connections between these approaches and legal scholarship that describes legal problems that arise from a lack of resources. This question was at the core of the framing of an article I was then drafting and I wanted the benefit of another person's view of the same question I was grappling with. Adia produced an insightful analysis of the literature that was extremely well-written. This then led to several very helpful conversations that helped me refine my thinking, and then led to narrower research and writing assignments that contributed to the drafting of an article.

A third task I asked Adia to help with was reviewing materials from my clinic's policy and legislative work to draft case studies for our website and as teaching materials. Adia's work on this was fabulous and showed her versatility. She was able to digest large amount of information into well-crafted and audience-attuned prose. What most impressed me in this work was that she asked excellent questions. I believe this is an undervalued skill in young attorneys – the ability to accurately assess what you don't know, identify what you can figure out yourself, and then ask a senior colleague an effective question to move toward your collective goal. Adia asks expert questions that give me great confidence that she would be a very valuable clerk.

In our interactions since supervising her writing project and research assistant work, including in conversations about Adia's interest in a clerkship and career ambitions, my impressions have only deepened. Each of Adia's strengths would translate to her being a clerk who would produce reliably excellent work product while contributing to the collegiality, productivity, and atmosphere of chambers. I have no doubt she would be an incredible asset to chambers.

Please let me know if any more information would be helpful. I would be happy to speak more about Adia.

Sincerely,
Colleen F. Shanahan
Clinical Professor of Law
Columbia Law School
colleen.shanahan@law.columbia.edu
212-854-4291

Colleen Shanahan - colleen.shanahan@columbia.edu

CENTER FOR APPELLATE LITIGATION

120 WALL STREET-28TH FLOOR, NEW YORK, NY 10005 TEL. (212) 577-2523 FAX 577-2535



June 13, 2023

Your Honor:

I write in support of Adia Davis's clerkship application. I am a Supervising Attorney at the Center for Appellate Litigation. I also co-teach the Criminal Appeals Externship at Columbia Law School, where I worked very closely with Adia during her 3L year. Adia was an excellent extern, and she will make an excellent law clerk. She has my highest recommendation.

The application process for the externship is extraordinarily competitive. Because our students work directly with incarcerated clients on very serious felony cases, it is essential that the students we select are not only mature and professional, but also display the empathy and compassion required of advocates who work with this vulnerable population. Adia was one of only six students, from a pool of dozens, selected for the course.

Adia is at the top of the list of outstanding students I have had the pleasure of teaching. During the seminar component of the externship—essentially an advanced legal writing course focusing on the fundamentals of appellate advocacy—Adia quickly grasped the more challenging, technical aspects of appellate doctrine. Among a very talented group of students, she stood out as especially well-prepared, engaged, and super sharp.

But where Adia really shined was in the “experiential” component of the course. Her task was to prepare an appellate brief for a client convicted of arson and sentenced to a lengthy prison term. Her approach to the case was quite “clerk-like.” She drafted a thorough and organized case digest that was peppered with questions, observations, and suggested avenues for further investigation. Her research was also thorough and on-point, and she integrated it seamlessly with the record facts to produce a clean, logical outline. As a result of all of this diligent prep work, our weekly conversations about the case were rich, productive, and enjoyable (so refreshing!), and we were able to quickly develop a clear plan of attack for the appellate brief.

Adia produces beautiful legal writing. Her portion of the brief (students work in teams of two) challenged the strength of the prosecution's evidence by attacking

the credibility of its primary witness. Adia's writing was clear and direct—and, most importantly, convincing—with no trace of the usual pitfalls of student writing (wordiness, grammatical issues, unnecessary creativity, etc.). Her mastery of the record paid off. She produced an elegant draft that required very little editing from this heavy editor (again, refreshing!). I was able to file the brief ahead of schedule, which has never happened in the clinic before or since.

At the end of the semester, we visited our client, who was incarcerated in a medium-security prison near the Canadian border. By that point, I had no concerns about letting Adia present the case, which she did with great confidence and compassion. I could tell our client was comforted by Adia's warm, calm presence.

Due to various administrative delays, Adia had graduated and started work by the time the appeal was calendared in the appellate division. She nonetheless enthusiastically agreed when I asked if she would be willing to argue the case. Her oral advocacy was outstanding and reflective of several weeks of thoughtful preparation. She was composed and confident before the Court. She was assertive yet respectful when responding to the judges' questions. You wouldn't know from her performance that she was arguing the point in the brief that she did not draft.

We won the case. Through Adia's (and her partner's) advocacy, our client's felony conviction was reversed, and the case was remanded for a new trial. The client accepted a very favorable guilty plea on a lesser count, resulting in her immediate release from prison. Adia still keeps in touch to ask how our client is doing, which I see as a real testament to her commitment, in the long term, to the public interest. She recently expressed an interest in partnering with me on another pro bono appeal, which I'm so excited about!

As a person, Adia is kind, collegial, down-to-earth, and easygoing. She would bring exactly the right energy to the bustling yet intimate atmosphere of a judge's chambers. I recommend her to yours unhesitatingly and without any qualification.

If you would like to hear more wonderful things about Adia, my phone number is 212-577-2523 (ext. 544). Thank you for your consideration.

Respectfully,



Ben A. Schatz

ADIA DAVIS

Columbia Law School J.D. '22
(336) 602-9034
ajd2222@columbia.edu

CLERKSHIP APPLICATION WRITING SAMPLE

This writing sample, which consists of a fact and two argument sections from a brief, was drafted as an assignment for my current employer, Gibson, Dunn & Crutcher. The brief was written on behalf of a client appealing his denial of asylum, withholding of removal, and relief under the Convention Against Torture before the Board of Immigration Appeals. The sections were lightly edited by a senior attorney. I have discussed use of this excerpt with my employer, and all potentially identifying client information has been removed.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

B. Country Conditions in Honduras

For decades, Honduras has been plagued by violence, and insufficient resources and institutional weakness have rendered the police unable to protect victims of violence. Exh. 8, Tab N, ¶ 42. In some places, the violence is so severe that “authorities [can]not assure freedom of movement because of criminal activity and a lack of significant government presence.” Exh. 10, Tab DD at 261. Moreover, Honduran police forces are known to maintain ties to criminal organizations and are themselves often involved in crimes, including extortion and murder. *Id.* ¶¶ 45, 47, 48. And while some elements of the national government have made efforts to reform the police, these attempts have uniformly failed. Exh. 8, Tab N, ¶¶ 44, 46-50.

In addition to threats from organized crime, indigenous communities and minority groups in Honduras experience significant violence and discrimination on account of their race and ethnicity. A 2021 State Department report on Honduras highlights that “social discrimination against racial and ethnic groups persist[s], as d[oes] physical violence.” Exh. 10, Tab DD at 267. Indigenous “communities continue[d] to report threats and acts of violence against them.” *Id.* In particular, the Lenca indigenous group, of which Respondent is a member, faces significant discrimination in Honduras “such as difficult access to get[ting] jobs and access to land.” Exh. 8, Tab N, ¶ 38. Continued violence against the Lenca is “rooted in [this] broader context over land,” as well as “corruption,” “other criminal activity,” and “limited state ability to protect the rights of vulnerable communities.” Exh. 10, Tab DD at 267.

Violence and discrimination against indigenous communities occur throughout the country, but these problems are especially pronounced in rural areas generally, and in

Respondent's town of Aguanqueterique specifically. Many in the Lenca community reside in rural areas, and lack access to basic services such as running water, education, and health care as a result of systemic discrimination. Exh. 8, Tab N, ¶¶ 34, 36. This discrimination and lack of access to basic resources is evident in Respondent's town of Aguanqueterique, where the mayor himself has discriminated against the indigenous population. *See* Exh. 8, Tab M at 60-61. Indigenous leaders in Aguanqueterique have filed repeated complaints against the mayor for abusing his authority and diverting resources, including water, away from the town's indigenous community. *See id.*

Violent family disputes are also common in Honduras. Both nuclear and extended families hold significant importance, operating as “fundamental social unit[s].” Exh. 8, Tab N, ¶ 29. The social importance of the family unit is accompanied, however by family feuds, which are common in Honduras. *Id.* ¶ 24. Family feuds “are part of settling scores and involve[] . . . the use of various forms of violence towards members of targeted family (*e.g.* threats, beatings, harassing, and even killing members of the family),” and such retaliation “can last years.” *Id.* ¶¶ 25, 27. Despite the danger and violence associated with family feuds, they “are rarely investigated and the perpetrators rarely punished for their crimes, including death threats.” *Id.* ¶ 57. These family feuds are particularly common in rural areas such as Aguanqueterique. *Id.* ¶ 24.

The Honduran government has proven unable and unwilling to protect victims of violence. Exh. 8, Tab N, ¶ 52. Individuals who file police reports face severe retaliation from their attackers, which extends not only to the reporting individuals themselves but also to their family members. *Id.* ¶ 51. The criminal justice system in Honduras is similarly unable to bring justice to offenders, because it faces “widespread” corruption and lacks both resources and

political will. *Id.* ¶¶ 45, 58. Although the government has taken some steps to address corruption, such as discharging corrupt officers, problems persist. *Id.* ¶ 48. “A recent report showed that there are still corrupt officials within the police force.” *Id.* ¶ 48. The 2021 State Department country-conditions report found that “corruption along with a lack of investigative resources and judicial delays led to widespread impunity, including in security forces.” Exh. 10, Tab DD at 254. This corruption manifests at the local level in Aguanqueterique, where the mayor has received illegal salary advances, and abused his authority by discriminating against the indigenous community. *See* Exh. 8, Tab M.

Finally, “[t]he criminal justice system in Honduras has few resources and insufficient manpower to investigate cases,” and the police are “institutionally weak.” Exh. 8, Tab N, ¶¶ 42, 58. This lack of resources limits not only the government’s ability to investigate violence against citizens, but also its capacity to investigate the pervasive internal police corruption. *Id.* ¶ 49.

VII. ARGUMENT

B. The IJ erred in finding that Respondent’s claims do not satisfy the elements for asylum and withholding of removal.

3. The government of Honduras is unwilling and unable to protect Respondent from persecution.

The Immigration Judge (“IJ”) also erred by “ignor[ing] ample record evidence tending to show that” the Honduran government, at both a national and local level, is “unwilling” to investigate the abuse suffered by Respondent and his family. *See Pan v. Holder*, 777 F.3d 540, 545 (2d Cir. 2015). Persecution must be at the hands of the government or a non-governmental actor the government is unwilling or unable to control. *See Matter of A-R-C-G-*, 26 I. & N. Dec.

388, 395 (BIA 2014); *Matter of Acosta*, 19 I. & N. Dec. 211, 222 (BIA 1985) (holding that harm or suffering “had to be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control”). Therefore, private acts can “constitute persecution if the government is unable or unwilling to control such actions.” *Pan*, 777 F.3d at 543; see *Rizal v. Gonzales*, 442 F.3d 84, 92 (2d Cir. 2006) (same).

In determining whether the government is unwilling or unable to control a private actor, the IJ must conduct a thorough review of all relevant facts and provide sufficient justification for his or her holding. See e.g., *Pan*, 777 F.3d at 545 (remanding where the IJ found applicant credible, but the IJ and Board of Immigration Appeals (“BIA”) ignored ample record evidence tending to show that the police were unwilling or unable to protect applicant and his family from private persecutors); *Matter of D-G-C-*, 28 I. & N. Dec. 297, 303 (BIA 2021) (remanding where the IJ held applicant would not face persecution, but set forth limited factfinding and analysis in rendering the decision); *In Re S-H-*, 23 I. & N. Dec. 462, 465 (BIA 2002) (noting that it is important for Immigration Judges “to make findings of fact and law that are supported by the record.”).

In Respondent’s case, the IJ erred in his application of the unwilling or unable standard. The IJ required Respondent to meet an unreachably high burden of proving that the Honduran government would be unwilling or unable to control persecution against him. Respondent sufficiently showed through ample record evidence that the Honduran police were unwilling and unable to protect him. The IJ even found the evidence credible, yet ultimately held that the record did not establish the Honduran government is “wholly unable or unwilling to assist crime victims.” I.J. at 28. Although Respondent submitted credible evidence, the IJ improperly

analyzed the facts selectively, and found the evidence insufficient without a thorough explanation.

The IJ credited expert testimony that Honduran police could not protect Respondent from Persecutor, yet ultimately placed very little weight on the testimony in his final holding. A country-conditions expert reported that while family feuds are a common form of violence in Honduras, “the Honduran government does not investigate these crimes and, thus, many of them go unpunished.” Exh. 8, Tab N, ¶ 28. The expert noted that it is “highly unlikely that [Persecutor]’s threats and attacks against [Respondent] will be punished,” noting that the Honduran justice system has few resources and insufficient manpower to investigate cases. *Id.* ¶ 57; *supra*, Section II.B. While the IJ found the evidence credible and probative with respect to the country conditions, he did “not afford significant weight to the conclusions made with respect to the Respondent.” I.J. at 14. The IJ failed to thoroughly explain his decision to largely disregard credible and probative evidence. *See Pan*, 777 F.3d at 545.

The IJ also disregarded Respondent’s evidentiary submissions regarding five unpursued police reports against Persecutor. In addition to a copy of one of the police reports, Respondent submitted several letters from family members and acquaintances who corroborated his testimony. Exh. 8, Tab B; Exh. 8, Tab C; Exh. 8, Tab D; Exh. 8, Tab F; Exh. 8, Tab H at 1. In dismissing the evidence, the IJ found there were many reasons Persecutor could have been released. I.J. at 27-28. Evidence of *multiple* unpursued police reports should not, however, be ignored in analyzing a police force’s ability and willingness to control a private persecutor. *See Matter of O-Z- & I-Z-*, 22 I. & N. Dec. 23, 26 (BIA 1998) (finding that the government was unwilling or unable to control private attackers where applicant reported at least three attacks to the police, and the police took no action beyond writing a report).

Respondent also introduced evidence showing that Aguanqueterique's mayor is corrupt and provided support to Persecutor after his arrests. The IJ noted that Respondent's credible testimony alone was not sufficiently persuasive to satisfy his burden of proof, and throughout the decision, turned to "independent and objective evidence" that Respondent provided in support of his application. I.J. at 16. Respondent used newspaper articles and several family member declarations to support his proposition about the mayor's corruption. Exh. 8, Tab M (reporting on the mayor's illegal salary advances and abuse of authority, including discrimination against indigenous community); Exh. 8, Tab C, ¶ 14 ("the mayor Ramon Antonio Medina would give [Persecutor] money to get him out of his problems"); Exh. 16, Tab FF at 1 (discussing family's exclusion from community funding and services because they did not belong to the mayor's political party). Nevertheless, after analyzing Respondent's independent corroborating evidence, the IJ still called the evidence "unsupported allegations." I.J. at 27. Again, the IJ held Respondent to an extremely high standard for proving the government's unwillingness to control his persecution.

The IJ even acknowledged that country-conditions evidence demonstrated Honduras's corruption and inability to control crime. I.J. at 28. Despite crediting the evidence, the judge ultimately held that the record did "not establish that the Honduran government is wholly unable or unwilling to assist crime victims," or that corruption inhibits the police's overall ability to assist. I.J. at 28. In so holding, the IJ noted that the country-conditions reports showed that the Honduran government "prosecuted some officials who committed abuses, including government corruption." *Id.* In rendering this final determination, the IJ erred in the same way he erred when evaluating the individual pieces of evidence regarding the Honduran government's role in Respondent's persecution. The IJ acknowledged the evidence regarding the police's inability

and unwillingness to control Persecutor was credible, yet ultimately determined it was insufficient without providing a clear justification. By selectively analyzing evidence in this manner, the IJ erroneously applied a heightened “unwilling or unable” standard. He rejected Respondent’s credible evidence regarding the government’s role in his persecution, without explaining why the evidence was not sufficient.

The country conditions evidence “reflect[s] Honduras’s inability to control crime.” I.J. at 28. The Board should remand the IJ’s clearly erroneous finding that the government is not unwilling or unable to protect Respondent. *See Martinez-Segova v. Sessions*, 696 F. App’x 12, 13-14 (2d Cir. 2017) (citing *Pan*, 777 F.3d 540 at 545).

C. The IJ erred in finding that Respondent is ineligible for relief under the Convention Against Torture.

2. Respondent’s torture would occur with the consent or acquiescence of the Honduran government.

The IJ determined that Respondent’s torture would not occur with the consent or acquiescence of the Honduran government because the national government has enacted a handful of initiatives designed to stem the endemic corruption in the country’s police forces. The IJ’s reasoning betrays two errors: first, the IJ failed to consider whether—on the whole—the government is likely to acquiesce to Respondent’s torture; and second, the IJ failed to consider whether *local* actors would acquiesce to Respondent’s torture. Both failures are reversible error.

The state action requirement is satisfied if government officials know of or remain willfully blind to conduct constituting torture. 8 C.F.R. 208.18(a)(7). “To constitute torture, the pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence

of a public official acting in an official capacity or other person acting in an official capacity.” 8 C.F.R. 208.18(a)(1). Therefore, officials need not explicitly consent to private conduct rising to the level of torture. *See Garcia-Aranda v. Garland*, 53 F.4th 752, 760-61 (2d Cir. 2022) (finding that in a CAT relief application, the BIA failed to analyze whether it was likely that a member of the Honduran local police would participate in or acquiesce to violent conduct by a Honduran gang); *Khouzam v. Ashcroft*, 361 F.3d 161, 171 (2d Cir. 2004), as amended (Apr. 12, 2004) (holding that torture of an applicant was more likely than not to occur where higher-level officials either knew of or remained willfully blind to torture by police).

Additionally, if the government as a whole is incapable of preventing the torture, the fact that a few officials may have taken steps to prevent the torture does not negate government acquiescence. *See De La Rosa v. Holder*, 598 F.3d 103, 109-10 (2d Cir. 2010) (remanding the BIA’s decision that the government did not acquiesce because some persons within the government had taken steps to prevent an applicant’s torture, when he presented significant evidence that the potential torturer had contacts in the government, corruption was widespread among the police, and the police lacked resources to prevent torture). All evidence regarding CAT relief, including government consent or acquiescence to torture, must be considered in the aggregate. *See* 8 C.F.R. § 208.16(c)(3) (“in assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered”); *see also Hamilton v. Whitaker*, 759 F. App’x 69, 71 (2d Cir. 2019) (remanding because the IJ failed to consider the aggregate risk of torture); *Matter of G-A-*, 23 I&N Dec. 366, 368 (BIA 2002) (considering the risk of harm “in the aggregate” based on all of applicant’s characteristics to conclude that the applicant would be tortured).

Here, expert testimony regarding Honduran police demonstrated that the police would fail to intervene to prevent Persecutor's likely future acts of torture. The evidence specifically noted that police do not spend significant resources to intervene in what they view as family disputes. Exh. 8, Tab N, ¶ 28. And the government was not only complicit or willfully blind to Respondent's past torture, but the police actively engaged in violent and abusive conduct against him. Exh. 8, Tab B, ¶ 16; Exh. 16, Tab HH at 1 ("The police grabbed my brother and beat him up and ripped his clothes."). This evidence, which the IJ completely ignored in his analysis, should have also been considered when evaluating the aggregate risk of torture with government acquiescence. 8 C.F.R. § 208.16(c)(3).

In finding that the Honduran government did not acquiesce to torture, the IJ cited extensively to initiatives the government is taking to address corruption within the police force. *See* I.J. at 31. However, a few actions taken to combat torture do not negate police corruption and acquiescence as a whole. *See De La Rosa*, 598 F.3d at 110 (noting the court had "significant doubts" that the positive activity of a few actors overrode "both the complicity of the other government actors and the general corruption and ineffectiveness" of the government). Despite some limited governmental actions to address Honduran police corruption, Respondent provided strong evidence that as a whole, the local Honduran police force is still corrupt, under resourced, and knew of the torture yet took no steps to prevent it. Exh. 10, Tab DD at 253-54; Exh. 8, Tab N, ¶¶ 8-28; Exh. 8, Tab B, ¶ 7 ("I believe I submitted around 5 complaints throughout the years of various events of [Persecutor]'s violence"); Exh. 8, Tab D. As with the "unwilling and unable" analysis, the IJ credited most of the above evidence, but then ultimately rejected it as unpersuasive, without explanation. The IJ thus committed legal error by failing to consider that the preventive efforts of some government actors do not foreclose the possibility of government

acquiescence on the whole. *See Walker v. Lynch*, 657 F. App'x 45, 47-48 (2d Cir. 2016) (citing *Hui Lin Huang v. Holder*, 677 F.3d 130, 138 (2d Cir. 2012)); *Pierre v. Lynch*, 639 F. App'x 707, 709-10 (2d Cir. 2016); *Celedona-Herrera*, 627 F. App'x at 9.

Finally, the IJ failed to adequately consider whether *local* officials in Respondent's Honduran town would consent to his torture. The IJ stated in general terms that the "Honduran government is not willfully blind to issues" with the police, and ultimately the government would not acquiesce. I.J. at 31. However, the IJ erred because this analysis does not address Respondent's specific situation for which he provided ample evidence. *See Garcia-Aranda v. Garland*, 53 F.4th 752, 760-61 (2d Cir. 2022) (finding that in a CAT relief application, the BIA failed to analyze whether it was likely that a member of the Honduran local police would participate in or acquiesce to violent conduct by a Honduran gang); *see also* 8 C.F.R. § 208.16(c)(3); *Matter of G-A-*, 23 I & N Dec. 366, 368 (BIA 2002) (evaluating the risk of torture by considering applicant's specific personal characteristics and circumstances). Contrary to the IJ's conclusion, Respondent demonstrated that the police failed to investigate any of the five police reports filed by his family, and offered credible evidence that the local mayor is corrupt and interferes on Persecutor's behalf—evidence that local officials will acquiesce to his torture, just as they did before.

Applicant Details

First Name **Rachel**
 Middle Initial **A**
 Last Name **DeCaluwe**
 Citizenship Status **U. S. Citizen**
 Email Address rdecaluwe@luc.edu

Address	Address Street 1448 W DIVERSEY PKWY, APT 2 City CHICAGO State/Territory Illinois Zip 60614-1112 Country United States
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Contact Phone Number **5867478775**

Applicant Education

BA/BS From **University of Michigan-Ann Arbor**
 Date of BA/BS **August 2017**
 JD/LLB From **Loyola University Chicago Law School**
<https://shar.es/aHLcj5>
 Date of JD/LLB **May 13, 2023**
 Class Rank **15%**
 Law Review/Journal **Yes**
 Journal(s) **Loyola University Chicago Law Journal**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Honors Appellate Advocacy Program - Billings, Exum & Frye National Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Brunson, Samuel
sbrunson@luc.edu
312-915-6346

Chait, Aaron
aaron.chait@gmail.com
312-560-1638

Reilly, Eve
ccc.chancerycalendar7@cookcountyil.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to apply for the clerkship opportunity in your chambers for Fall 2024.

I am motivated to clerk for your chambers because of my commitment to public service. As you can see from my resume, I have prior experience working for the federal government and found the work to be tremendously rewarding. I anticipate my upcoming role as a staff attorney for the Fourth Circuit Court of Appeals will prepare me well for a clerkship in your chambers. I am eager for the opportunity to further enhance my skills as an advocate, and gain experience analyzing a variety of legal issues.

My strong interest in this position is driven by my judicial externship in the Circuit Court of Cook County with Judge Reilly. During my externship, I enhanced my analytical skills, and honed my legal research and writing skills. I drafted bench memorandums and judicial opinions to advise the judge in determining the outcome of dismissal motions.

My strengths in legal research and writing have led to my editorial position on the Loyola University Chicago Law Journal and my prior role as a tutor for two first-year legal writing courses during my second year. I also received a CALI award for the highest grade in my legal writing section. Furthermore, my writing and advocacy abilities enabled me to participate in Loyola's Appellate Advocacy Program. My writing sample is a Brief in Opposition to Appeal that I authored during my internship at the Defense Intelligence Agency regarding a dismissed Equal Employment Opportunity complaint. The memo is the result of my own legal research and analysis with only minor edits by my supervisor.

I have enclosed my resume, transcript, writing sample, and letters of recommendation from Judge Eve Reilly, Professor Samuel Brunson, and Professor Aaron Chait. Thank you for your consideration, I would welcome the opportunity to interview with you.

Sincerely,

Rachel A. DeCaluwe

Rachel A. DeCaluwe

1448 W Diversey Parkway, #2 • Chicago, IL 60614 • 586-747-8775 • rdecaluwe@luc.edu

EDUCATION

LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW, Chicago, IL

Juris Doctor, *cum laude*, May 2023

Certificate in International Law and Practice, May 2023

GPA: 3.738/4.0 Rank: Top 15%

- *Loyola University Chicago Law Journal*, Lead Articles Editor, 2022-2023; Staff Member, 2021-2022
- Dean's List (Fall 2020, Spring 2021, Fall 2021, Spring 2022, Fall 2022)
- CALI Award for Highest Grade in: Legal Writing I, Fall 2020; Professional Responsibility, Spring 2021
- Honors Appellate Advocacy Program - Billings, Exum & Frye National Moot Court Competition, 2021-2022
- London Comparative Advocacy Program, Winter Break 2023
- Legal Writing Tutor, 2021-2022

UNIVERSITY OF MICHIGAN, Ann Arbor, MI

Bachelor of Science in Ecology and Evolutionary Biology, May 2017

- Two terms University Honors (GPA higher than 3.5), James B. Angell Scholar (Two consecutive A terms), William J. Branstrom Freshman Prize (awarded to top 5% of freshman class); President's Volunteer Service Award, 2016

COURT EXPERIENCE

U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT, OFFICE OF STAFF COUNSEL, Richmond, VA

Incoming Staff Attorney, September 2023

CIRCUIT COURT OF COOK COUNTY, CHANCERY DIVISION, Chicago, IL

Extern to the Honorable Eve M. Reilly, August – November 2021

- Drafted two judicial opinions and two bench memoranda.
- Researched case law to help advise the judge in determining outcome of dismissal motions.

EXPERIENCE

LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW, Chicago, IL

Research Assistant to Professor Carmen González and Professor James Gathii, February 2023 – May 2023

- Researched environmental law issues including the UN Resolution recognizing the right to a healthy environment.

DEFENSE INTELLIGENCE AGENCY, Washington, D.C.

Summer Intern, Office of General Counsel, Personnel Litigation Team, June – August 2022

- Security Clearance: Top Secret / Sensitive Compartmented Information (TS/SCI).
- Conducted critical reviews of EEO complaints involving claims of discrimination and hostile work environment resulting in the risk assessment of both sides, summation of required discovery, and identification of potential witnesses.
- Drafted the Agency's discovery requests, comprising Requests for Interrogatories, Documents, and Admissions. Additionally, initiated internal discovery requests to Agency management, witnesses, and offices.
- Drafted a targeted statement of facts based on the ROI in preparation for the Agency's Motion for Summary Judgment.
- Drafted Agency's Brief in Opposition to Appeal regarding a Final Agency Decision to dismiss EEO complaint.
- Researched, summarized, and analyzed international and domestic legal obligations related to intelligence oversight.
- Trained over 200 incoming employees on their ethical legal obligations.

CLYDE & CO US LLP, Chicago, IL

Summer Intern, June – August 2021

- Conducted case law research on bankruptcy discovery issues.
- Conducted statutory research on statute of limitations for childhood sexual abuse.
- Drafted insurance coverage letters for cases involving sexual misconduct.

HUDSON LEGAL GROUP, Ann Arbor, MI

Training Manager, August 2019 – July 2020; *Team Leader Substitute*, September 2019 – July 2020; *Senior Legal Evidence Specialist*, August 2019 – July 2020; *Legal Evidence Specialist*, October 2018 – August 2019

- Developed training materials; trained and monitored new legal evidence specialists during a three-month training period.
- Proofed petitions for accuracy, assigned new clients, and responded to client messages as team leader substitute.
- Critically reviewed evidence for preparation of U.S. immigration petitions (I-140 EB-1, EB-2, I-129 O-1).

Name: Rachel DeCaluwe
Student ID: 00001557345
Birthdate :

Print Date: 6/9/23

Beginning of Law Record

Fall 2020

Term GPA	3.780	Term Totals	15.000	15.000	56.700
Cum GPA	3.656	Cum Totals	30.000	30.000	106.020

Program: Law - Full-time Division

Course	Description	Attempted	Earned	Grade	Points
LAW 113	Civil Procedure	4.000	4.000	B+	13.320
LAW 152	Property	4.000	4.000	A	16.000
LAW 162	Torts	4.000	4.000	B	12.000
LAW 190	Legal Writing I	2.000	2.000	A	8.000
LAW 190R	Basic Legal Research	0.000	0.000	P	0.000
LAW 424	Prof. Identity Formation	1.000	1.000	P	0.000

Summer 2021

Program: Law - Full-time Division

Course	Description	Attempted	Earned	Grade	Points
LAW 210	Evidence	4.000	4.000	A-	14.680
Term GPA	3.670	Term Totals	4.000	4.000	14.680
Cum GPA	3.658	Cum Totals	34.000	34.000	120.700

Fall 2021

Program: Law - Full-time Division

Course	Description	Attempted	Earned	Grade	Points
LAW 240	Crim Procedure: Investigation	3.000	3.000	B+	9.990
LAW 296	Legal Writing Tutors	2.000	2.000	P	0.000
LAW 410	Legal Writing III	2.000	2.000	A	8.000
LAW 487	Law Journal Members	1.000	1.000	P	0.000
LAW 598	Appellate Advocacy Honors Prog	2.000	2.000	A	8.000
LAW 599	Extern Intensive Fld Placement	3.000	3.000	P	0.000
Topic: Judicial					
Term GPA	3.713	Term Totals	13.000	13.000	25.990

Spring 2021

Program: Law - Full-time Division

Course	Description	Attempted	Earned	Grade	Points
LAW 122	Constitutional Law	4.000	4.000	A-	14.680
LAW 132	Contracts	4.000	4.000	A-	14.680
LAW 140	Criminal Law	3.000	3.000	A	12.000
LAW 192	Legal Writing II	2.000	2.000	A	8.000
LAW 608	Juvenile Justice	2.000	2.000	A-	7.340

Name: Rachel DeCaluwe
Student ID: 00001557345
Birthdate :

Print Date: 6/9/23

Cum GPA 3.667 Cum Totals 47.000 47.000 146.690

Spring 2022

Program: Law - Full-time Division

Course	Description	Attempted	Earned	Grade	Points
LAW 270	Business Organizations	4.000	4.000	A	16.000
LAW 296	Legal Writing Tutors	2.000	2.000	P	0.000
LAW 414	Professional Responsibility	3.000	3.000	A	12.000
LAW 487	Law Journal Members	1.000	1.000	P	0.000
LAW 573	Prosec & Defend Terr Cases	2.000	2.000	A-	7.340
LAW 598	Appellate Advocacy Honors Prog	2.000	2.000	A	8.000

Course	Description	Attempted	Earned	Grade	Points
LAW 176	International Trade Law	2.000	2.000	A	8.000
LAW 221	Administrative Law	3.000	3.000	A	12.000
LAW 231	Secured Transactions	3.000	3.000	B	9.000
LAW 273	Refugee Law and Policy	2.000	2.000	A-	7.340
LAW 387	Intl Environmental Law	3.000	3.000	A	12.000
LAW 459	Intro to Engl Legal Prof	1.000	1.000	P	0.000
LAW 491	Law Journal Senior Editors	2.000	2.000	P	0.000
Term GPA	3.718 Term Totals	16.000	16.000		48.340
Cum GPA	3.725 Cum Totals	77.000	77.000		238.370

Spring 2023

Program: Law - Full-time Division

Course	Description	Attempted	Earned	Grade	Points
LAW 250	Estates	3.000	3.000	B+	9.990
LAW 311	Advanced Evidence	2.000	2.000	A	8.000
LAW 372	Intl Law and Practice	3.000	3.000	A	12.000
LAW 491	Law Journal Senior Editors	2.000	2.000	P	0.000
LAW 511	London Comp Advocacy Prgm	1.000	1.000	P	0.000
LAW 522	Election Law	3.000	3.000	A	12.000
Term GPA	3.817 Term Totals	14.000	14.000		41.990
Cum GPA	3.738 Cum Totals	91.000	91.000		280.360

Fall 2022

Program: Law - Full-time Division

Name: Rachel DeCaluwe
Student ID: 00001557345
Birthdate :

Print Date: 6/9/23

Law Career Totals
Cum GPA: 3.738 Cum Totals 91.000 91.000 280.360

End of Loyola Unofficial Transcript

UNOFFICIAL TRANSCRIPT

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Rachel DeCaluwe for a clerkship in your Chambers. I believe that she would be an excellent clerk, capable of not only doing the work needed, but capable of excelling in her contributions.

I had the good fortune to teach Ms. DeCaluwe last year in my Business Organizations course. For many students, Business Organizations presents an entirely new set of challenges. In their first year, they begin to learn basic lawyering skills and take classes that, while fundamental to their future career, are not entirely unfamiliar. Most students understand what the Constitution is, how criminal law works, and that there are procedural rules in court.

Business Organizations shifts that mindset. Students use the same skills to read cases, but they also begin to learn to anticipate problems. We talk about how those problems could have been solved in advance and how, in the end, they were actually solved.

This change in focus sometimes throws students off. But Ms. DeCaluwe navigated the change in focus just fine. When I called on her, she was always prepared and always capable of discussing the law and the facts of cases in a studied and insightful manner.

Her preparation for and participation in class illustrate both her character as a hard worker and her willingness to reach outside her comfort zone. While she has an impressive resume, there is nothing on it that would have prepared her for the complicated business transactions that we discussed. She came in with a background in biology, not business or business law. But she put in the work that she needed to and proved perfectly capable of learning an entirely new discipline.

I hope that you will seriously consider Ms. DeCaluwe's candidacy; I am convinced that she will bring the same dedication, curiosity, and hard work to her clerkship that she has brought to law school.

Please do not hesitate to reach out to me if I can be of any further help. You can reach me at (312) 915-6346 or at sbrunson@luc.edu.

Sincerely,

Samuel D. Brunson

Associate Dean for Faculty Research and Development

Georgia Reithal Professor of Law

Loyola University Chicago School of Law

Samuel Brunson - sbrunson@luc.edu - 312-915-6346

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Rachel DeCaluwe, a former student of mine in Legal Writing, has asked me to write her a letter of recommendation in support of her clerkship application. Rachel would make an excellent law clerk; I recommend her without reservation.

As a 1L, Rachel excelled in my legal writing course. In the fall semester she won the CALI Award, presented to the student with the highest grade in the class. Her writing is clear and precise, she has become an adept legal researcher, and she is consistently one of my most engaging students (active both in class and during office hours). Her writing assignments were thoughtful, well-structured, and carefully done. Her comments, both in class and during our periodic one-on-one conferences, reflected a deep understanding of both the mechanics and style of effective legal writing. And her oral argument at the end of the semester was well-prepared and conversational—something few 1Ls achieve.

I recommend Rachel enthusiastically.

If there is any further information I can provide in support, please do not hesitate to contact me at (312) 560-1638 or achait@luc.edu.

Sincerely,

Aaron Chait
Adjunct Professor of Law
achait@luc.edu
(312)560-1638

Aaron Chait - aaron.chait@gmail.com - 312-560-1638

February 24, 2023

Re: Recommendation of Rachel DeCaluwe

To whom it may concern:

I write on behalf of Rachel DeCaluwe, who is applying to be a clerk in your chambers. Our courtroom has had the pleasure of working directly with Rachel over the course of the Fall 2021 semester. Rachel was a reliable and motivated extern who served our chambers well, and would make an excellent candidate for any courtroom.

As an extern, Rachel reviewed cases files, wrote bench memoranda, and drafted under advisement opinions for multiple complex cases involving contract, insurance, and property disputes and violations of the Freedom of Information Act. Rachel worked passionately on her projects, asked insightful questions, and showed a genuine interest in developing her legal writing skills. Rachel's writing always demonstrated exceptional research and analytic skill, and our team quickly learned that we could trust her work product.

Additionally, Rachel observed our daily court call and contested hearings via Zoom. Rachel was always interested in understanding the technicalities of running a courtroom including what was happening behind the scenes.

Rachel is a candidate who would succeed in a variety of legal disciplines due to her remarkable work ethic and professionalism. We had the great pleasure of working with Rachel, and she would be a wonderful addition to any chambers. I highly recommend her for your consideration.

Should you require any additional information, please do not hesitate to contact my chambers.

Very truly yours,



Judge Eve M. Reilly

Circuit Court of Cook County, Chancery Division
50 W. Washington, Suite 2405, Chicago IL 60602
312-603-3343

Classification: UNCLASSIFIED

Rachel A. DeCaluwe

1448 W Diversey Parkway, #2 • Chicago, IL 60614 • 586-747-8775 • rdecaluwe@luc.edu

WRITING SAMPLE

**Agency's Brief in Opposition to Appeal
Defense Intelligence Agency
Summer Intern Assignment
Summer 2022**

I wrote the attached Brief in Opposition to Appeal while a summer intern with the Defense Intelligence Agency in 2022. I conducted the legal research and wrote the brief myself. Some information, such as names, case numbers, and addresses, have been redacted for confidentiality. The Agency has authorized my use of this brief as a writing sample.

Classification: UNCLASSIFIED

Classification: UNCLASSIFIED

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations

<div style="display: flex; justify-content: space-between;"> <div style="width: 40%;"> <p>██████████,</p> <p>Complainant/Appellant,</p> <p style="text-align: center;">v.</p> <p>██████████████████████,</p> <p>U.S. Department of Defense (DIA),</p> <p>Agency/Appellee.</p> </div> <div style="width: 5%; text-align: center;"> <p>)</p><p>)</p><p>)</p><p>)</p><p>)</p><p>)</p><p>)</p><p>)</p><p>)</p><p>)</p> </div> </div>	<p>EEOC Appeal No.: ██████████</p> <p>Agency No.: ██████████</p> <p>August 5, 2022</p>
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AGENCY’S BRIEF IN OPPOSITION TO APPEAL

The U.S. Department of Defense, Defense Intelligence Agency (“DIA” or “Agency”), through undersigned counsel, submits this Brief in Opposition to Appellant ██████████’s (“Appellant”), Appeal pursuant to 29 CFR § 1614.403(f) and MD 110, Chapter 9, § IV(F). Appellant’s appeal, filed on June 30, 2022, is without merit. The Agency’s Final Agency Decision (FAD) dismissing his complaint is fully supported by the law.

STATEMENT OF THE CASE AND FACTS¹

On March 7, 2022, Appellant initiated EEO counseling. (Complaint File (“CF” at 13, 26).² On April 5, 2022, the Agency issued the Appellant a Notice of Right to File a Formal Complaint, which Appellant acknowledged receipt of on April 11, 2022. (CF at 26-28, 62-63, 81). Appellant filed a formal EEO complaint of discrimination with the DIA Equal Opportunity & Diversity Office on May 3, 2022. (CF at 9, 84-85). In the complaint, Appellant alleged

¹ The Agency adopts and incorporates the facts contained in the Agency’s Final Decision dismissing his complaint dated June 2, 2022.

² Citations to the Complaint File, as uploaded to the Federal Sector Portal, are cited as (CF at #) based upon the page numbers in the PDF file.

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discrimination and a hostile work environment based on race (African American) and disability (physical). With his May 3, 2022 formal complaint, Appellant provided one additional allegation and on May 5, 2022, he informed the EO office of a second additional allegation. (CF at 75, 77-78, 84-85). In response to EEO's request, Appellant later clarified these two additional allegations on May 16, 2022. (CF at 75, 77-78). These allegations were considered by EEO as amendments to his formal complaint as discrete acts and incidences of hostile work environment. (CF at 38-39).

On June 2, 2022, the Agency issued a FAD dismissing his complaint in its entirety due to failure to comply with applicable time limits contained in 29 CFR § 1614.105. (CF at 38-44). On June 2, 2022, the Agency sent the final order by email to Appellant. The Agency's final order advised Appellant of his appeal rights, and the requirement to file an appeal within 30 calendar days of the date of receipt of the Agency's final order. A blank EEOC Form 573, Notice of Appeal/Petition, was attached to the final order for Appellant to use for the appeal. (CF at 89-90).

Appellant filed an appeal with the EEOC Office of Federal Operations (OFO) on June 30, 2022, which the Agency received on July 6, 2022. (CF at 4-6). Appellant has not provided any explanation as to why the Commission should reinstate his claims and overturn the Agency's FAD.

STANDARD OF REVIEW

OFO's review of a FAD is a *de novo* review. 29 C.F.R. § 1614.405(a). The decision on appeal is based on the preponderance of the evidence contained in the complaint file. "As a general rule, no new evidence will be considered on appeal unless there is an affirmative showing

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that the evidence was not reasonably available prior to or during the investigation or during the hearing.” MD-110, Ch. 9, VI.A.4, (8/5/2015).

For the reasons that follow, the Agency requests that Appellant’s appeal be denied, and the Agency’s FAD be sustained.

ARGUMENT

I. The FAD Correctly Concluded That the Complaint Should be Dismissed for Appellant Failing to Timely File His Formal Complaint.

On June 2, 2022, the Agency issued a Final Agency Decision (FAD) dismissing Appellant’s complaint in its entirety due to his failure to comply with applicable time limits contained in 29 CFR § 1614.105. (CF at 38-44). Specifically, the complaint was properly dismissed because Appellant failed to timely file his formal complaint. He filed his formal complaint via email on May 3, 2022, which was seven days beyond the 15-calendar day filing deadline of April 26, 2022.

The regulation set forth at 29 C.F.R. § 1614.107(a)(2) states, in pertinent part, that the agency shall dismiss a complaint that fails to comply with the applicable time limits contained in 29 C.F.R. § 1614.105. *See e.g., Patrick S. v. Dep’t of Defense (Defense Intelligence Agency)*, EEOC Appeal No. 2021005128 (Nov. 29, 2021). Under 29 C.F.R. § 1614.107(a)(2), a complainant is required to file a formal complaint within 15 calendar days of his/her receipt of the Notice of Right to File a Formal Complaint.

Under 29 C.F.R. § 1614.105(d), if the informal matter is unresolved, an aggrieved person must be informed in writing by an EEO Counselor of the right to file a formal complaint, within 30 days of contacting the Counselor. The notice must inform the complainant of the right to file a discrimination complaint within 15 days of receipt of the notice. *Id.*

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On March 7, 2022, Appellant made initial contact with the Agency's Equal Opportunity and Diversity Office. (CF at 13). On April 5, 2022, the Appellant was issued the "Notice of Right to File a Discrimination Complaint", ("the Notice"), which was within the required 30 days of Appellant's initial contact with the Counselor under 29 C.F.R. § 1614.105(d). The Notice informed Appellant: "In order to file a formal discrimination complaint, you must complete and sign the enclosed DIA Form 207 and email the completed and signed form **within 15 calendar days after receipt of this notice . . .**". The Notice also advised Appellant that a formal complaint will be considered timely "if it is filed or emailed . . . on or before the expiration date of the 15-calendar day filing period." A blank EEOC Form 207, Formal Complaint of Discrimination, was attached to the Notice to use for filing his formal complaint. (CF at 29-31).

According to 29 C.F.R. § 1614.107(a)(2), the 15-calendar day period to file a formal complaint begins from the day of receipt of the Notice of Right to File a Formal Complaint. *See, e.g., Johnston v. USPS*, 0183196, 1069/A5 (1983); *Zachariah W. v. Dep't of Defense (National Geospatial-Intelligence Agency)*, EEOC Appeal No. 2020002319 (Sept. 3, 2020); *Lida G. v. Dep't of Defense (Defense Logistics Agency)*, EEOC Appeal No. 2019000697 (Feb. 5, 2019). On April 11, 2022, Appellant acknowledged receipt of the Notice via email. Since Appellant acknowledged receipt of the Notice on April 11, 2022, the 15-calendar day deadline for filing a formal complaint was on April 26, 2022. However, Appellant filed his formal complaint via email on May 3, 2022, seven days past the filing deadline of April 26, 2022.

The Agency acknowledges that under 29 C.F.R. § 1614.106(d), a complainant may amend a complaint at any time, prior to the conclusion of the investigation, to include issues or claims like or related to those raised in the complaint. In his formal complaint, filed on May 3,

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2022, Appellant provided an additional incident that involved his duty location being moved, and on May 5, 2022, he sent an email to inform EEO of a new incident regarding his reasonable accommodation request and retaliation. On May 12, 2022, EEO requested clarification on these new allegations of discrimination. On May 16, 2022, Appellant responded to the request for clarification and stated the events occurred on April 12, 2022. (CF 38; 75-77).

Since Appellant failed to comply with the deadline for filing his formal complaint, any attempts to amend claims to that complaint, either as background evidence or as discrete acts, should also be dismissed as amendments to that complaint. However, if the events within those two attempted amendments are within the statutory 45-day period within which a complainant must contact EO in order to be timely, then Appellant may have them raised in a new EO complaint, separate from the one that was dismissed as having been filed untimely. In other words, the FAD correctly dismissed Appellant's complaint in its entirety due to failure to comply with the time limits for filing his formal complaint, but he should be permitted to have the two April 12, 2022 events accepted by EEO as a new, different complaint.

II. Appellant Has Not Asserted That He Was Prevented from Timely Filing His Complaint.

Appellant has not attempted to show any circumstances beyond his control prevented him from timely filing his complaint. An extension to the time limit for filing a formal complaint is warranted only where an individual is so incapacitated by his condition that he is unable to meet the regulatory time limits. *See Ogden v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120114117 (May 22, 2012) (citing *Davis v. United States Postal Service*, EEOC Request No. 05980475 (Aug. 6, 1998); *Crear v. United States Postal Service*, EEOC Request No. 05920700 (Oct. 29, 1992)). In order to warrant an extension, the claim of incapacity must be supported by

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medical evidence of incapacity. *See Mahalia P. v. Dep't of Veterans Affairs (Veterans Health Administration)*, EEOC Appeal No. 2019001614 (Sept. 13, 2019).

Here, Appellant has not met his burden to make such an assertion, if he should so attempt to do so. Although his formal complaint form was signed on April 25, 2022, Appellant did not submit the formal complaint until May 3, 2022. (CF at 84-85). On May 3, 2022, Appellant stated via email, "I've been trying to get the document over on DODIS but is [sic] not letting me forward." (CF at 86). There is no evidence in the record that Appellant attempted to communicate with the EEO office prior to May 3, 2022 regarding any difficulties he had forwarding his documents and filing his formal complaint. Since Appellant has previously filed three formal EEO complaints ([REDACTED]) within the appropriate regulatory time constraints, he is clearly aware of both the process to file a formal complaint, as well as how to contact the EEO office. There is simply no evidence of any mitigating factors Appellant took to timely file his complaint, such as filing the formal complaint by personal email or notifying the EO office via email or phone of any technical difficulties he was experiencing.

The Commission has affirmed an agency's FAD to dismiss a formal complaint due to untimely filing by a complainant. *See Marian Douglas v. Dep't of State*, EEOC Appeal No. 01A11572 (April 16, 2001). The Commission reasoned that complainant provided "no explanation on appeal for her untimeliness" and acknowledged that the notice "clearly stated that a complaint needed to be filed within fifteen calendar days." *Id.* *See also Joan R. v. Dep't of Veterans Affairs*, EEOC Appeal No. 0120171094 (April 25, 2017) (affirming the agency's FAD dismissing the complaint for untimely filing as the complaint offered no "justification to warrant an extension of the time limit for filing the complaint.").

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Here, Appellant provided no evidence to suggest that he attempted to file his formal complaint ahead of the 15-calendar day deadline of April 26, 2022. In fact, he offered no justification at all for any matters beyond his control that prevented him from timely filing the formal complaint. If he was truly experiencing difficulties forwarding his documents, he should have so informed EEO. However, Appellant made no attempts to contact the EEO office ahead of the April 26, 2022 deadline to notify them of his technical issues. Rather, Appellant waited until May 3, 2022 to notify the EEO office of his alleged troubles forwarding the documents, which was seven days after the filing deadline. He did not provide any reasoning for why he waited to file his formal complaint until seven days past the filing deadline, why he failed to notify the EEO office ahead of the filing deadline regarding any technical difficulties he may have faced and failed to detail any circumstances beyond his control that prevented him from timely filing his formal complaint. In sum, Appellant has not provided any explanation for why the Commission should reinstate his claims and has not offered any justification on appeal to warrant an extension.

III. Appellant Received Unambiguous Notification by EEO of the Deadline to File.

The time limit for filing a formal complaint may be extended if it is shown that a complainant “was not notified of the time limit and was not otherwise aware of it, that despite due diligence [he] was prevented by circumstances beyond [his] control from filing, or for other reasons considered sufficient by the agency or the Commission.” *Nikia A. Turner v. United States Postal Service (Great Lakes Area)*, EEOC Appeal No. 01A51006 (Feb. 10, 2005). In *Turner*, the Commission affirmed the agency’s FAD dismissing the complaint for untimely filing. *Turner*, EEOC Appeal No. 01A51006 (Feb. 10, 2005). The Commission reasoned that the notice indicated in “very clear and plain language” that complainant had to file a formal

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complaint within 15 calendar days of its receipt. *Id.* In addition, the Commission found that the complainant showed no “extenuating circumstance on appeal” that warranted an extension of the time limit for filing the complaint. *Id.*

Just as in *Turner*, the Notice to Appellant in this case stated clearly that the formal complaint must be filed “within 15 calendar days after receipt of this notice” in bold letters. The Notice, written in clear and plain language in bold lettering, clearly outlined the 15-calendar day filing time limit to Appellant in unambiguous terms. Appellant was therefore aware of the time limit, given that he acknowledged receipt of the Notice which contained the notification of the 15-calendar day filing time limit. Therefore, Appellant was adequately notified of the time limit to file his formal complaint, yet he still failed to comply with the 15-calendar day time limit.

CONCLUSION

The Agency’s FAD is fully supported by substantial evidence, and the law. Nothing in Appellant’s appeal requires changing that. The Agency’s EEO unambiguously informed him of the deadline to file his complaint. Appellant has not provided any explanation for why the Commission should reinstate his claims, nor has he shown any circumstances beyond his control prevented him from timely filing his complaint or asserted that he attempted to contact EEO to let them know of any alleged difficulties with filing his complaint. The law requires that the Agency’s final decision be affirmed. Therefore, the Commission should AFFIRM the Agency’s FAD and DENY Appellant’s appeal to reinstate his formal discrimination complaint.

Respectfully submitted,

_____/s/_____
Devon L. Zebrovious, Esq.
Associate General Counsel – Litigation
Defense Intelligence Agency
[REDACTED]

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CERTIFICATE OF SERVICE

I certify that the AGENCY'S BRIEF IN OPPOSITION TO APPEAL was sent as indicated this day to:

Email and FedSep: Office of Federal Operations

[REDACTED]

Email: Complainant

[REDACTED]

[REDACTED]

August 5, 2022

_____/s/
Devon L. Zebrovius, Esq.
Associate General Counsel - Litigation
Defense Intelligence Agency

[REDACTED]

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Applicant Details

First Name	Katelyn		
Last Name	Deibler		
Citizenship Status	U. S. Citizen		
Email Address	kdeibler@american.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 4817 36th Street NW, Apartment 309 City Washington State/Territory District of Columbia Zip 20008 Country United States </td> </tr> </table>	Address	Street 4817 36th Street NW, Apartment 309 City Washington State/Territory District of Columbia Zip 20008 Country United States
Address			
Street 4817 36th Street NW, Apartment 309 City Washington State/Territory District of Columbia Zip 20008 Country United States			
Contact Phone Number	717-606-8970		

Applicant Education

BA/BS From	American University
Date of BA/BS	May 2019
JD/LLB From	American University, Washington College of Law http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010
Date of JD/LLB	May 18, 2024
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	American University Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Oswald, Scott
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Popper, Andrew
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(202) 274-4233

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

May 31, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am a rising fourth year part-time law student at American University Washington College of Law and write to express my strong interest in joining your chambers in the 2024-2025 term as your law clerk. I would be honored to learn from such a committed public servant, and I am confident you would find my professional and academic qualifications to be an asset in your chambers.

As a first-generation college student, I had the privilege of receiving my college degree and legal education in Washington, D.C. However, I grew up in Lancaster, Pennsylvania and am interested in potentially returning to Pennsylvania to begin my career practicing in civil rights litigation. While attending my law school courses in the evenings, I worked full-time in a demanding litigation position at an employment law firm, where my experience working on and sitting at counsel table during an eight-day trial solidified my aspirations to serve as a judicial law clerk. In addition to my full-time employment, I served as a Teaching Assistant for two professors in Contracts, Torts, and Administrative Law; gained significant research and writing experience as a Research Assistant for two professors; published an article at the Northern Ohio University Law Review; and accepted a leadership role on the American University Law Review.

I am an inquisitive learner who has developed interests in nearly every facet of the law. However, the most gratifying experience of my legal education was researching and writing an article regarding the scope of anti-retaliation protections for whistleblowers. This experience showed me how much I enjoy researching and writing about novel and difficult legal issues, and this fascination, combined with my future litigation aspirations, inspired me to pursue this opportunity in your chambers.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professor Andrew Popper, Professor Stephen Wermiel, and R. Scott Oswald are providing letters of recommendation in support of my application. I am happy to provide additional recommendations as requested. Thank you for your consideration.

Respectfully,
Katelyn Deibler

Katelyn Deibler

4817 36th Street NW Apt. 309, Washington, D.C. 20008 · kdeibler@american.edu · 717.606.8970

EDUCATION

American University Washington College of Law, Washington, D.C. August 2020–May 2024
Juris Doctor Candidate, Evening Division GPA: 3.87 (Top 5%)
 Journal: American University Law Review, *Note and Comment* Editor
 CALIs: Legal Research and Writing I (Fall 2020), Sex Based Discrimination (Spring 2022), Administrative Law (Summer 2022), Health Care Fraud & Abuse (Fall 2022), Copyright (Fall 2022)
 Awards: Dean’s Merit Endowed Scholarship Recipient (2023) | Ira P. Robbins Award Recipient (2023)
 Positions: *Teaching & Research Assistant*, Administrative Law & Torts, Andrew Popper (June 2022–Present)
Research Assistant, Employment Discrimination, Susan Carle (May 2023–Present)
Teaching Assistant, Contracts, Michael Carroll (August 2021–December 2021)
 Publications: Katelyn Deibler, *The Blacklist: Post-Employment Retaliation Under the False Claims Act*, 49 OHIO N.U. L. REV. 21 (2022)
 Pro Bono: National Immigrant Women’s Advocacy Project (January 2021–January 2023)

American University, School of International Service, Washington, D.C. August 2016–May 2019
Bachelor of Arts in International Relations
 Activities: Division I Student Athlete (Cross Country & Track and Field)

EXPERIENCE

The Employment Law Group P.C., Washington, D.C. September 2021–Present
Litigation Law Clerk

- Research issues involving discrimination, retaliation, and harassment under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Rehabilitation Act, and state anti-discrimination statutes.
- Draft pleadings, discovery requests and responses, motions for summary judgment, motions to compel, motions in limine, opposition motions, and appellate briefs in matters before federal, state, and administrative courts.
- Served as member of three-person trial team in an eight-day age and disability discrimination jury trial, including drafting testimony charts, preparing opening and closing statements, co-authoring all affirmative and opposing motions in limine, writing proposed witness questions, providing exhibits and impeaching materials to attorneys, and documenting witness testimony to successfully defend against six motions for judgment as a matter of law.
- Assist U.S. Department of Justice’s Civil Frauds and Criminal Antitrust Divisions and U.S. Attorney General Offices in investigations of and intervention into sealed and unsealed False Claims Act, Anti-Kickback Statute, Financial Institutions Reform, Recovery, and Enforcement Act, and Criminal Antitrust Anti-Retaliation Act whistleblower complaints.
- Communicate with clients and opposing counsel to respond to their inquiries and provide case updates.
- Manage heavy case load of 15-20 matters at any time and meet all accompanying litigation deadlines.

George P. Mann & Associates, Silver Spring, Maryland May 2021–August 2021
Federal Appeals & Litigation Intern

- Conducted legal research on Violence Against Women Act, U-Visa Program, and Special Immigrant Juvenile Status.
- Analyzed judicial opinions and hearing transcripts to suggest issues for appeal.
- Drafted and revised appellate brief to be filed with the Court of Appeals for the Sixth Circuit.

American University, School of Public Affairs, Washington, D.C. December 2019–September 2021
Faculty Affairs Coordinator

- Managed promotion and re-hiring processes for all full-time and adjunct faculty at the School of Public Affairs.
- Coordinated with Senior and Associate Deans on adjunct faculty hiring and course assignments.

INTERESTS

- Long-Distance Running | Reading Classical Fiction | Cooking & Baking

DEIBLER KATELYN M 4295687 11/07

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ADVANCED PLACEMENT CREDITS ACCEPTED 10.00 HOURS
TRANSFER CREDITS ACCEPTED 3.00 HOURS FROM
HARRISBURG AREA COMMUNITY COLLEGE

FALL 2018
BIO-200
GOVT-485

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TOPICS IN WOMEN AND POLITICS
WOMEN, POLITICS AND THE MEDIA 01.00 A- 03.67
GLOBAL HEALTH 03.00 A 12.00
PEACE, GLOBAL SEC & CONFLT RES 03.00 A- 11.01
INTERNSHIP IN INT'L STUDIES 02.00 A- 07.34
SENIOR CAPSTONE: INT'L STUDIES
TRANSNATIONAL ORGANIZED CRIME 03.00 A- 11.01
ADV SPANISH I: SPAIN 03.00 P 00.00
DEAN'S LIST
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SISU-105 WORLD POLITICS 3:3 03.00 B+ 09.99
SISU-106 FIRST YEAR SEMINAR
DEMOC, DEMAGOGUES, & DIALECTIC 03.00 B 09.00
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WORLD POLITICS 01.00 P 00.00
WRTG-100 COLLEGE WRITING 03.00 A 12.00
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SISU-391
SISU-419

SPAN-352

SPRING 2019
ANTH-439

CULTURE, HISTORY, POWER, PLACE
EVOLUTION OF INEQUALITY 03.00 A- 11.01
INTRODUCTION TO PUBLIC HEALTH 03.00 A 12.00
GLOBAL HEALTH POLICY 03.00 A 12.00
TOPICS IN POL ECON OF LATIN AM
BREAKFAST IN THE AMERICAS 03.00 A- 11.01
TOPICS IN GLOBAL INEQUALTY/DEV
MIGRATION AND DEVELOPMENT 03.00 A 12.00
LATIN AMER: HIST, ART, LIT 03.00 A 12.00
DEAN'S LIST
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SPAN-210

SUMMER 2017

PERMIT TO STUDY
TRANSFER CREDITS ACCEPTED 3.00 HOURS FROM
HARRISBURG AREA COMMUNITY COLLEGE

DEGREE AWARDED:
BACHELOR OF ARTS
DEGREE DATE:
05/12/19

MAJOR:
INTERNATIONAL STUDIES

MINOR:
PUBLIC HEALTH

GRADUATING GPA:
3.62

MAJOR GPA:
3.55

FALL 2017
HPRM-245 MULTICULTURAL HEALTH 03.00 A 12.00
HPRM-491 INTERNSHIP IN HEALTH PROMOTION 01.00 A 04.00
PUBH-340 FUNDAMENTALS OF EPIDEMIOLOGY 03.00 A 12.00
SISU-206 INTRO TO INT'L STUDIES RSRCH 03.00 A- 11.01
SISU-270 INTRODUCTION TO HUMAN RIGHTS 03.00 A- 11.01
SPAN-252 SPANISH, INTERMEDIATE I 04.00 A- 14.68
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FALL 2020

LAW-504
LAW-516
LAW-522

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TORTS 04.00 B+ 13.20
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SPRING 2018
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HIST,ART,SOC THROUGH SONDHEIM 03.00 A 12.00
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SISU-240 INTERNATIONAL DEVELOPMENT 03.00 B 09.00
SISU-300 INTRO TO INT'L ECONOMICS 03.00 B- 08.01
SISU-306 ADV INT'L STUDIES RESEARCH
FIELD RSRCH MTHD IN INT'L ST 03.00 B+ 09.99
SPAN-253 SPANISH, INTERMEDIATE II 04.00 B+ 13.32
AU SEM SUM: 17.00HRS ATT 17.00HRS ERND 56.32QP 3.31GPA

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05/30/23

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SPRING 2021
LAW-501 CIVIL PROCEDURE 04.00 A- 14.80
LAW-507 CRIMINAL LAW 03.00 A 12.00
LAW-517 LEGAL RESEARCH & WRITING II
RESEARCH & WRITING II 02.00 A 08.00
LAW SEM SUM: 9.00HRS ATT 9.00HRS ERND 34.80QP 3.86GPA

LAW CUM SUM: 65.00HRS ATT 65.00HRS ERND 228.70QP 3.87GPA
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LAW SEM SUM: 4.00HRS ATT 4.00HRS ERND 16.00QP 4.00GPA

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LAW-796F LAW REVIEW I 02.00 P 00.00
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SPRING 2022
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FALL 2022
LAW-605 CONSTITUTIONAL LAW: 1ST AMEND 03.00 A 12.00
LAW-623 COPYRIGHT 03.00 A 12.00
LAW-719B HLTH CARE FRAUD & ABUSE 03.00 A 12.00
LAW-798F LAW REVIEW EDITORIAL BOARD 02.00 P 00.00
LAW SEM SUM: 11.00HRS ATT 11.00HRS ERND 36.00QP 4.00GPA

SPRING 2023
LAW-643 FEDERAL COURTS 04.00 A 16.00
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LAW-798S LAW REVIEW EDITORIAL BOARD 02.00 P 00.00
LAW SEM SUM: 9.00HRS ATT 9.00HRS ERND 28.00QP 4.00GPA

SUMMER 2023
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FALL 2023
LAW-649 PRE-TRIAL LITIGATION 03.00 -- --,--
LAW-695 CIVIL TRIAL ADVOCACY 03.00 -- --,--
LAW-840 SECURED TRANSACTIONS 03.00 -- --,--

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June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in support of Katelyn Deibler joining your chambers as a judicial law clerk. The Employment Law Group, P.C. (TELG) hired Katelyn as a litigation law clerk in September 2021. Katelyn is a strong writer, diligent in her approach, and joined me at the counsel table for an 8-day jury trial in March 2023.

Katelyn performs high-level, substantive legal research and works from the intake of a case through trial. She has drafted complaints, discovery requests, and oppositions to motions for summary judgment for my review. Her first drafts are high quality. She often will notice minute details that have escaped others' attention.

I personally worked closely with Katelyn while preparing for an eight-day jury trial in Maryland state court this past March. Throughout the trial preparation process, Katelyn assisted me in drafting our opening statement, testimony charts, motions in limine and oppositions, and preparing our final exhibits. During the trial, she sat with me and my co-counsel at the counsel table, observing jury selection, motions arguments, and all arguments and testimony. Throughout the trial, she was actively engaged in organizing our witness and impeachment exhibits, proposing questions for witnesses, and tracking all witness testimony to successfully defend six of seven motions for judgment as a matter of law.

Katelyn's strengths have been recognized by more than just me. She receives strong feedback from each of TELG's principal attorneys about the strength of her research, her writing skills, her time management, and her organization. My colleagues have reported that Katelyn is a fast and precise legal researcher who quickly picks up on legal theory. I am confident that she will perform similarly in your chambers.

Please do not hesitate to contact me with any further questions about her.

Sincerely,

R. Scott Oswald

R. Scott Oswald
Managing Principal
The Employment Law Group, P.C.

Scott Oswald - soswald@employmentlawgroup.com - (202) 261-2806

June 5, 2023

I am writing to give the highest possible recommendation for a judicial clerkship to Katelyn Deibler, one of the very finest students we have at American University Washington College of Law.

I have had the pleasure of teaching Katelyn both in Constitutional Law and in a First Amendment survey class. She is exceptionally smart, writes with great skill and clarity, and brings highly perceptive analysis to even the most complex cases. In my view her skills, intelligence and experience make her a top candidate for a judicial clerkship.

I confess that in my courses, Katelyn has been a comparatively quiet student. But she asks the most penetrating questions and prompts the most thoughtful discussions with me during office hours or other conversations outside of class time. I have come to understand that although she is not going to be the first person to raise her hand to volunteer in class, she is second to no one in her preparation, insights, and depth of understanding of doctrinal concepts and of the use of even complex rules.

Her wisdom was always apparent to me in both classes, and I could literally see her in First Amendment building on the knowledge she had gained in Constitutional Law. She performed very well in both classes and was truly a pleasure to teach.

Her experiences beyond my classroom are extraordinary. She has served as a teaching assistant for two professors, covering three different courses. This is truly a recognition of what I have described above, the depth of her understanding of complex legal subjects. It is also a strong comment on her organizational and time-management skills. Throughout her time assisting these professors both in the classroom and with outside support, Katelyn was working fulltime and going to school largely at night. She was carrying a heavy workload supporting litigation attorneys in an employment litigation firm, was performing her roles assisting faculty, was working on our most respected journal, the American University Law Review, and all the while managed to maintain a stellar GPA of 3.85. This is truly remarkable.

On top of all that, she did the nearly impossible – she got her law review comment published in another journal outside WCL. That happens very rarely. Most journals publish their own student-pieces and have no room for work by students at other schools. But in recognition of her determination and success, Katelyn was published in the Ohio Northern University Law Review in 2022.

As you can tell by now, I have the absolute highest regard for her abilities, intelligence, work ethic, writing strength, and so much more. She is, in addition to all of this, a delightful person who would fit in perfectly in a collegial but demanding work environment.

Please don't hesitate to let me know if I may answer questions or offer more information. My cellphone is 240-472-2444, and my email is swermiel@wcl.american.edu.

Sincerely,

A handwritten signature in cursive script that reads "Steve Wermiel".

Stephen Wermiel
Professor of Practice of Constitutional Law and
Interim Director, Program on Law & Government
American University Washington College of Law

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in strong and unequivocal support of Katelyn Deibler, an applicant for a clerkship in your chambers. I have known Katelyn since enrolling in law school two years ago. Katelyn was in my torts class and later in my administrative law class. She was, by far, the outstanding student in both.

Katelyn's administrative law exam was, by any measure, the best exam I have read in four decades of teaching. She was a wonderful participant in those classes – thorough, insightful, and incredibly well-prepared. Based on that and a number of interactions, I hired Katelyn as a teaching and research assistant at the end of her second year. I have had the great pleasure of working together since that time.

Lest this get lost in a sea of superlatives – I have never known a student more qualified to work as a law clerk and more likely to excel in our profession. She handles doctrinal complexities with stunning ease. Her approach is uniformly insightful and her presentations calm and perfectly understandable. She possesses the unique quality of clarity in all that she does. Her distillation of what I believe to be truly difficult material is unlike any student with whom I have worked. On task after task, she truly amazes me.

The end product on each and every task she has been assigned is impeccable. She does not miss anything. Beyond that, she is creative and unflappable, easily in the top couple of students I have ever taught or with whom I have worked. I see her as a colleague and value her input and insights as I would with my most trusted colleagues on the law school faculty.

I have read her remarkable legal scholarship and between that and her work with me, I already consider her an up and coming legal scholar. This is a brilliant, committed student who, importantly, is easy going and truly a joy to be around. She has an orderly and effective manner and add to that a great sense of humor and engaging personality and you get Katelyn Deibler.

Katelyn is a hard-working, self-sufficient and unencumbered law student. I recommend her most highly and without the slightest reservation. Please do not hesitate to contact me if you have any questions about her.

With appreciation,

Andrew F. Popper
Professor of Law

Andrew Popper - apopper@wcl.american.edu - (202) 274-4233

Writing Sample

The attached writing sample is an Opposition to the Defendant's Motion for Summary Judgment. I drafted this in my full-time position as a Litigation Law Clerk at the Employment Law Group, P.C. in September 2022. The opposition was filed in the Northern District of California. I produced the first draft the entire brief, and Principal Tom Harrington at The Employment Law Group, P.C. reviewed and made minor edits. In anticipation of using this as a writing sample, Mr. Harrington certified that this brief was substantially my own work.

The case involves claims of disability discrimination and failure to provide reasonable accommodations under the Rehabilitation Act of 1973 and the California Fair Employment and Housing Act. To reduce the document's length, I have omitted the introduction, statement of the facts, the first argument section discussing joint employment, and the conclusion.

If you have any questions about this writing sample, please feel free to contact Tom Harrington at tharrington@employmentlawgroup.com or General Counsel and Principal Nicholas Woodfield at nwoodfield@employmentlawgroup.com.

1 schedule. Ex. 7: Nassar Dep. 36:6-12. Wallace testified the reason a re-entry plan was not established
2 for Libraty was because UCSF refused to proctor him. Ex. 4: Wallace Dep. 97:1-13. UCSF also
3 repeatedly objected to Libraty's hiring, which ultimately led to his firing. *Id.*

4 These significant disputes of fact regarding the extent and impact that UCSF had regarding
5 the VA's decision to revoke Libraty's job offer are more appropriately left to a jury.
6

7 **2. UCSF failed to provide Libraty with reasonable accommodations.**

8 Libraty has two claims under the Rehabilitation Act and FEHA for UCSF's failure to provide
9 him with reasonable accommodations when it refused to create and sponsor his re-entry plan. Notably,
10 UCSF purports to move for summary judgment on all claims, but it fails to argue why it is entitled to
11 summary judgment on Libraty's two reasonable accommodations claims. Without UCSF bearing the
12 burden of production, any finding of summary judgment is improper. *Anderson*, 477 U.S. at 250 n.4.
13

14 Under both the FEHA and the Rehabilitation Act, a prima facie case for failure to provide
15 reasonable accommodations is met when (1) a plaintiff suffers from a disability; (2) the plaintiff is an
16 otherwise "qualified individual"; (3) the employer is aware of the disability; and (4) the plaintiff was
17 denied a reasonable accommodation. The burden lies on a plaintiff to show they are a "qualified
18 individual[,]," which only requires a showing that they "can perform the essential functions of their job,"
19 with or without reasonable accommodations. *See Buckingham v. United States*, 998 F.2d 735, 740
20 (9th Cir. 1993); 29 C.F.R. § 1613.702(f). When a reasonable accommodation is requested, a plaintiff
21 must make a "facial showing that a reasonable accommodation is possible." *See Buckingham*, 998 F.2d
22 at 740 (citing *Arneson v. Heckler*, 879 F.2d 393, 396 (8th Cir. 1989)); 29 C.F.R. § 1613.702(f)(2).
23 After a plaintiff shows they are qualified for the position, the employer has an affirmative duty to
24 provide all necessary reasonable accommodations. *Buckingham*, 998 F.2d at 740.
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1 When interpreting the Rehabilitation Act, the Supreme Court of the United States determined
 2 that Congress intended the Act to prevent not just “invidious animus, but rather of thoughtlessness and
 3 indifference—of benign neglect.” *Alexander v. Choate*, 469 U.S. 287, 297 (1985). Among the protections
 4 the Act sought to provide, it included the “discriminatory effect of job qualification . . . procedures.” *Id.*
 5 (citing S. REP. NO. 93-318, p. 4 (1973)). Rehabilitation Act claims are subject to the same standard as
 6 claims arising under the Americans with Disabilities Act. *Scarborough v. Natsios*, 190 F. Supp. 2d 5, 19
 7 n.10 (D.D.C. 2002).

9 There are no disputed facts regarding Libraty's first three prima facie elements. First, the
 10 undisputed material facts show Libraty was disabled. Ex. 4: Wallace Dep. 36:21-37:2. Second, both
 11 UCSF and the VA knew about Libraty's disability. Ex. 2: Samim Dep. 16:8-22; Ex. 3: Benninger Dep.
 12 29:7-14; Ex. 5: Correa Dep. 18:23-19:12, 33:23-34:5; Ex. 17: Bukhari Dep. 32:9-14; Ex. 19 ¶ 13; Ex. 21;
 13 Ex. 24 ¶¶ 2, 9. Third, Libraty was a qualified individual. Following two interviews with the Fresno VA
 14 for the joint position, the interview panel *unanimously* voted to hire Libraty. Ex. 4: Wallace Dep.
 15 41:11-15. Samim described Libraty as “very smart” and noted “it was a good interview, it was a very
 16 favorable interview.” Ex. 2: Samim Dep. 13:25. Bukhari admitted Libraty had an “impressive CV,” and
 17 Wallace believed Libraty was a very qualified physician who would provide excellent care for patients at
 18 the VA and UCSF. Ex. 17: Bukhari Dep. 32:5; Ex. 4: Wallace Dep. 56:22-25. Even Nassar determined
 19 that Libraty was an “excellent I[nfectious] D[isease] physician and researcher.” Ex. 29. In sum, Libraty
 20 had over twenty years of clinical, teaching, and research experience, all of which made him qualified for
 21 the joint infectious disease position.
 22

24 **a. UCSF refused to proctor Libraty, denying him of a necessary reasonable accommodation.**

25 Reasonable accommodations are “[m]odifications or adjustments to the work environment . . .
 26 that enable a qualified individual with a disability to perform the essential functions of that position.” 29
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1 C.F.R. § 1630.2(o)(1)(ii). For Libraty to begin his joint position with the Fresno VA and UCSF, he
2 required two reasonable accommodations: minor mobility accommodations and a re-entry plan.

3 Libraty made his reasonable accommodation requests known to both UCSF and the Fresno VA.
4 In his applications to both Defendants, Libraty was “very forthcoming about the fact that he had been out
5 of clinical practice for a few years because of a prior stroke” and included “an unsolicited cover letter to
6 explain his [medical] history.” Ex. 4: Wallace Dep. 36:21-37:2. In his cover letter to the joint position,
7 Libraty wrote that he required simple accommodations for his mobility. Ex. 16. His cover letter also
8 discussed his significant gap in clinical medical practice because of his brain hemorrhage and subsequent
9 recovery. *Id.* This gap in clinical practice required Libraty to complete a re-entry plan prior to receiving
10 credentialing at the Fresno VA and a faculty appointment at UCSF. Ex. 30; Ex. 1: Libraty Dep. 42:20-22.
11 Further, Libraty and Wallace verbally discussed his required re-entry plan was to accommodate his gap in
12 clinical practice following his second interview for the joint position. Ex. 30; Ex. 1: Libraty Dep.
13 42:20-22. This reasonable accommodation request was subsequently communicated to UCSF. Ex. 32.

14 Libraty's re-entry plan was an adjustment made to Defendant's usual hiring process, and it
15 accommodated the gap in Libraty's clinical practice which was a direct result of his stroke. It was an
16 accommodation *necessary* for Libraty to begin the joint infectious disease position because of his gap in
17 clinical practice following his stroke. Therefore, it squarely falls into the definition of what a reasonable
18 accommodations is. Despite UCSF's knowledge of Libraty's reasonable accommodation request, UCSF
19 refused to proctor Libraty, thereby denying him of the reasonable accommodation. Ex. 33. Nassar was
20 acutely aware that Libraty's re-entry plan was intricately tied to his disability as evidenced by his email
21 which asked if Nassar would violate the Americans with Disabilities Act if UCSF refused to proctor
22 Libraty. *Id.* Yet with this awareness, Nassar and the rest of USCF refused to provide Libraty with the
23 necessary accommodations he required to begin the joint position.
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1 **b. The re-entry plan was easy to implement and necessary to provide Libraty with equal**
2 **employment opportunities.**

3 After an employer is aware a reasonable accommodation is required, the employer has an
4 affirmative duty to provide reasonable accommodations. *Buckingham*, 998 F.2d at 740. There are
5 significant disputes of fact in the record regarding how much time and oversight it would have taken for
6 Libraty to successfully complete a re-entry plan. Some testimony supports that the re-entry plan
7 would be time consuming. Ex. 7: Nassar Dep. 32:1-7; Ex. 25. Meanwhile, most testimony supports
8 that coordinating re-entry plans was a “standard process.” Ex. 3: Benninger Dep. 36:25-37:2. For
9 example, the Defendants routinely coordinated these programs for nurse practitioners and surgeons
10 who were out of clinical practice for some amount of time, such as pregnancies. Ex. 4: Wallace Dep.
11 48:12-25; 69:1-6; Ex. 10. Libraty worked in infectious diseases, which is not a “procedure-based”
12 field, meaning a re-entry plan required even less direct observation. Ex. 4: Wallace Dep. 67:25-68:15.
13 It is estimated that Libraty's re-entry plan would only create an extra five or ten minutes of work for
14 UCSF per day for four weeks. *Id.* at 68:16-68:24.

15 This conflicting testimony is material because if Libraty's re-entry plan was reasonable, it was
16 unlawful for UCSF to refuse to proctor him. *See Buckingham*, 998 F.2d at 740. However, if the re-
17 entry plan was costly or unduly burdensome, then UCSF's is not liable under either act. *Id.* Since there
18 are competing facts regarding whether Libraty's accommodation request was reasonable, this is a
19 question of fact properly left for a jury. *See Prilliman*, 53 Cal. App. 4th at 954. Further, courts frequently
20 leave the question of whether an accommodation request was reasonable or not to juries. *See id.*

21 **c. Libraty engaged in an interactive process with both Defendants to accommodate his**
22 **disability; UCSF failed to reciprocate its efforts to accommodate Libraty's disability.**

23 The FEHA and Rehabilitation Act require that when a reasonable accommodation is requested or
24 known, an employer must “engage in a timely, good faith, interactive process with the employee or
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1 applicant to determine effective reasonable accommodations.” *Scotch v. Art Inst. of Cal.*, 173 Cal. App.
2 4th 986, 1003 (2009). In July and August 2019, the Defendants learned of Libraty’s disability and
3 reasonable accommodation requests. After scheduling his start date for October 15, 2019, Defendants had
4 over two months to accommodate Libraty’s disability following Libraty’s completion of all other pre-
5 employment requirements. Libraty completed all pre-employment qualifications. Ex. 5: Correa Dep.
6 63:23 – 64:4, 67:9-14. Libraty’s lack of a re-entry plan was the sole reason Libraty could not be privileged
7 and begin the joint position. Ex. 3: Benninger Dep. 55:14-16.

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9 Neither UCSF nor the Fresno VA ever followed up on Libraty’s reasonable accommodation
10 requests. Ex. 1: Libraty Dep. 45:13-46:20. Four days before Libraty’s start date, he asked the Fresno VA
11 where he should report on his first day of work. Ex. 28. For the first time, he was told that neither
12 Defendant had provided the requested reasonable accommodations so he could not start on October 15.
13 *Id.* On October 18, Libraty requested an update regarding his start date and status of obtaining a re-entry
14 plan for him. *Id.* For the next month, Libraty repeatedly reached out to ask for an update on his re-entry
15 plan. *Id.* Finally, in mid-November, a full month after Libraty was supposed to begin his position, the
16 Fresno VA invited Libraty for a visit without securing a re-entry plan. *Id.*

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18 This pattern continued; Libraty asked for an update, and the Defendants told him they were still
19 seeking to provide a re-entry plan. *Id.* For *seven* months, neither Defendant secured a re-entry plan or
20 asked Libraty for more information that would aid them in organizing his re-entry plan. Ex 1: Libraty
21 Dep. 114:16-115:4. Eventually, Libraty suggested a re-entry plan for himself which included having
22 UCSF review some of his treatment plans for six weeks. Ex. 31. Yet, Defendants rejected the plan and did
23 not explain why the re-entry plan was not viable or suggest a different plan. Libraty, alone, engaged in an
24 interactive process for over seven months before his employment offer for the joint infectious disease
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1 position was revoked. Ex. 20. By not even attempting to secure Libraty a re-entry plan, UCSF failed
 2 to engage in the required interactive process for Libraty's reasonable accommodation request.

3 **3. By refusing to provide equal employment opportunities to Libraty, UCSF discriminated**
 4 **against him.**

5 Both the Rehabilitation Act and FEHA have separate causes of action for failure to provide
 6 reasonable accommodations and disability discrimination. However, by failing to provide reasonable
 7 accommodations to disabled applicants and employees, employers can violate *both* causes of actions by
 8 treating the applicant differently than non-disabled applicants.

9 The *McDonnell Douglas* burden shifting framework is applied in FEHA and Rehabilitation Act
 10 cases. *Zamora v. Sec. Indust. Specialists, Inc.*, 71 Cal. App. 5th 1, 31 (2021). In this framework, the
 11 plaintiff has the initial burden of proving, by a preponderance of the evidence, a prima facie case of
 12 disability discrimination. *See Tex. Dep't of Comm. Affs. v. Burdine*, 450 U.S. 248, 253–54 (1981).
 13 Showing a prima facie case is *de minimis* and not onerous. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S.
 14 502, 506 (1993). Once the plaintiff shows a prima facie case of disability discrimination, the defendant
 15 must "articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell*,
 16 411 U.S. at 802. If the defendant succeeds, the plaintiff must show by a preponderance of the evidence
 17 that the defendant's legitimate reasons were mere pretext for discrimination. *Id.* at 804. At the summary
 18 judgment stage, the plaintiff need not persuade the court that the defendant's rationale for the adverse
 19 action is pretextual; instead, he must only show there are disputes of material fact that would permit a
 20 reasonable person to disbelieve the defendant's proffered rationale. *Hutson v. McDonnell Douglas*
 21 *Corp.*, 63 F.3d 772, 777 (8th Cir. 1995).

22 To establish a prima facie case of discrimination under the FEHA, a plaintiff must show he:
 23 (1) suffered from a disability; (2) was qualified for the position; and (3) was subjected to adverse
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employment action because of his disability. *Choocagi v. Barracuda Networks, Inc.*, 60 Cal. App. 5th 444, 460 (Cal. Ct. App. 2021). Similarly, a prima facie case under the Rehabilitation Act requires:

- (1) at the time of the alleged discrimination, the plaintiff had a disability within the meaning of the Rehabilitation Act;
- (2) except for h[is] disability, [h]e was otherwise qualified for the position; and
- (3) [h]e suffered an adverse employment action because of his disability.

Walton v. U.S. Marshals Serv., 492 F.3d 998, 1005 (9th Cir.2007). At this stage, “a plaintiff is required to produce ‘very little direct evidence of the employer’s discriminatory intent to move past summary judgment.’” *Id.* at 832 (citing *Chuang v. Univ. of Cal. Davis, Bd. of Tr.*, 225 F.3d 1115, 1128 (9th Cir. 2000)). Instead, a plaintiff must only show a presumption of discrimination to prove that triable issues of fact exist. *Walton*, 26 F.3d at 890.

a. The first two elements of Libraty’s *prima facie* case of disability discrimination are met.

The undisputed material facts show Libraty was disabled. Ex. 4: Wallace Dep. 36:21-37:2. Further, it is undisputed both UCSF and the Fresno VA knew about Libraty’s disability. Ex. 21; Ex. 2: Samim Dep. 16:8-22; Ex. 3: Benninger Dep. 29:7-14; Ex. 5: Correa Dep. 18:23-19:12, 33:23-34:5; Ex. 17: Bukhari Dep. 32:9-14; Ex. 19, no. 13; Ex. 24, nos. 2, 9.

Next, Libraty was a qualified individual. Following two interviews with the Fresno VA, the interview panel *unanimously* decided to hire Libraty. Ex. 4: Wallace Dep. 41:11-15. Samim described Libraty as “very smart” and noted “it was a good interview, it was a very favorable interview.” Ex. 2: Samim Dep. 13:25. Bukhari said Libraty had an “impressive CV,” and Wallace believed Libraty was a qualified physician who could care for veterans at UCSF Fresno. Ex. 17: Bukhari Dep. 32:5; Ex. 4: Wallace Dep. 56:22-25. Even Nassar determined Libraty was an “excellent ID physician and researcher.” Ex. 29. Libraty had over twenty years of both clinical, teaching, and research experience, all

1 of which was required in the Fresno VA position, making him well qualified for the joint infectious
2 disease position.

3 **b. There are significant disputes of material fact regarding whether UCSF's refusal to proctor**
4 **Libraty was because of his disability.**

5 It is well-settled that a plaintiff does not need to show their disability was the sole reason for the
6 adverse employment action; it must only have been a motivating factor. *See Murray v. Mayo Clinic*, 934
7 F.3d 1001, 1107 (9th Cir. 2019); *Parker v. Columbia Pictures Indus.*, 204 F.3d 326 (2d Cir. 2000);
8 *Gentry v. E.W. Partners Club Mgmt. Co. Inc.*, 816 F.3d 228, 235-36 (4th Cir. 2016); *Lewis v. Humboldt*
9 *Acquisition Corp.*, 681 F.3d 312, 315 (6th Cir. 2012) (en banc); *Serwatka v. Rockwell Automation, Inc.*,
10 591 F.3d 957, 963-64 (7th Cir. 2010).

11 **1. The reasons for UCSF's refusal to provide Libraty with reasonable accommodations**
12 **are constantly changing, raising an inference of pretext.**

13 Nassar cites various reasons regarding why Libraty was not hired for the joint position. On
14 August 29, 2019, the VA asked UCSF if it could assist in proctoring Libraty. Ex. 25. That same day,
15 Nassar asked his boss if declining to proctor Libraty would violate the Americans with Disabilities Act.
16 Ex. 26. On August 30, 2019, Nassar told the VA he declined to proctor Libraty because Libraty was not
17 board certified, thereby not meeting the minimum requirements for a UCSF faculty appointment. Ex.
18 25. Nassar claimed that because Libraty was not board certified, he was excluded him from teaching
19 fellows or becoming a division member. *Id.* Therefore, Nassar declined to participate in the re-entry
20 plan. *Id.*

21 Only a few days later, the system updated to show Libraty's board certification was active. Ex.
22 18. Nassar learned this on September 3, 2019. *Id.* However, Nassar then proffered a new reason for
23 declining to proctor Libraty's: UCSF was "understaffed." Ex. 7: Nassar Dep. 42:15-18. This reason is
24 also pretextual because Libraty's re-entry plan would only take approximately *five or ten minutes* a day,
25 thereby not requiring a significant amount of oversight. Ex. 4: Wallace Dep. 52:4-53:12.

1 It is implausible that a hospital is so understaffed it would not have five or ten minutes to provide an
2 employee with a reasonable accommodation. Further, an employer cannot refuse to provide reasonable
3 accommodations if an employee's request for a reasonable accommodation is reasonable; any denial of
4 an accommodations request that is "reasonable" is unlawful. *See Buckingham*, 998 F.2d at 740

5
6 Finally, UCSF recently discovered a third reason for why it could not provide reasonable
7 accommodations for Libraty. UCSF now argues that its refusal to proctor Libraty was because Nassar
8 wanted to protect UCSF and CCFMG's contract with the Fresno VA for infectious disease services. Dkt.
9 32-3 at 4. On September 5, 2019, UCSF and the Fresno VA met to discuss Libraty's hiring; at the
10 meeting, Nassar expressed concern about how Libraty's hiring impacted the UCSF and CCFMG contract.
11 Ex. 4: Wallace Dep. 58:7-25. However, the VA assured Nassar that Wallace hired Libraty to have more
12 infectious disease staffing, creating positions for both Libraty and CCFMG. *Id.* at 59:11-20. Therefore, it
13 is implausible that this could be considered a legitimate business reason to support not proctoring Libraty
14 as the CCFMG contract was going to continue even with Libraty's employment. This, along with UCSF's
15 changing explanations as to why it would not proctor Libraty creates a dispute of material fact as to
16 whether Nassar declined to proctor Libraty due to discriminatory animus.

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18 **2. UCSF treated Libraty differently from other similarly-situated applicants for the**
19 **joint infectious disease position.**

20 Libraty was treated differently from other Fresno VA employees who were given faculty
21 appointments. After UCSF receives an application for a faculty appointment, a committee is formed to
22 review the applicant's CV and other documents. Ex. 9: Nassar 30(b)(6) Dep. 29:5-9. But despite Libraty
23 submitting his application for a UCSF faculty appointment, he was never accepted or rejected from the
24 position. Ex. 1: Libraty Dep. 115:16-116:1. UCSF never provided Libraty with notice that his
25 application was incomplete or rejected. *Id.* at 115:16-116:1. Instead of gathering a committee to review
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1 Libraty's application, as UCSF does for other applicants, Nassar and his assistant only discussed that
2 Libraty's application was "disappointing," while refusing to pass it along for a vote. Ex. 23.

3 Further, this inference of discrimination is heightened because Nassar was eager to interview
4 another non-disabled applicant for the joint position only one month before Libraty applied. Ex. 13. At
5 no point during the conversations between the Fresno VA and UCSF about this non-disabled applicant
6 did Nassar raise *any* concerns about UCSF's contract. *Id.* Instead, the Defendants jointly decided to offer
7 the non-disabled candidate the position. *Id.* Yet, when an equally qualified Libraty later applied to the
8 same position, Nassar refused to engage with the re-entry process, refused to provide reasonable
9 accommodations, and constantly changed the reasons for UCSF's refusal to participate. Following the
10 rescission of Libraty's offer, the Fresno VA hired a non-disabled physician into the joint position. Ex. 3:
11 Benninger Dep. 65:8-66:6.
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13
14 UCSF treated Libraty differently because of his disability by not providing him with the same
15 opportunities it provided to other non-disabled applicants. Further, UCSF's disparate treatment between
16 Libraty and other non-disable applicant raises further refutes UCSF's alleged legitimate business
17 reasons. Because of this, and considering UCSF's constantly shifting explanations there are significant
18 disputes of fact regarding whether UCSF's treatment of Libraty constituted disability discrimination.
19

20 **IV. CONCLUSION**

21 For the foregoing reasons, Libraty respectfully requests that UCSF's Motion for Summary
22 Judgment be denied and this matter be set for a jury trial. UCSF functioned as a joint employer over the
23 joint infectious disease physician position, making Libraty's claims against UCSF proper. Additionally,
24 there are significant disputes of material fact regarding whether the adverse employment actions were
25 taken against Libraty because of his disability, making summary judgment inappropriate. By refusing to
26 provide Libraty with a re-entry plan to re-enter clinical practice following Libraty's brain hemorrhage
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Applicant Details

First Name	Aidan											
Last Name	Delaney											
Citizenship Status	U. S. Citizen											
Email Address	amd314@georgetown.edu											
Address	<table><tr><th>Address</th></tr><tr><td>Street</td></tr><tr><td>5101 Cammack Dr.</td></tr><tr><td>City</td></tr><tr><td>Bethesda</td></tr><tr><td>State/Territory</td></tr><tr><td>Maryland</td></tr><tr><td>Zip</td></tr><tr><td>20816</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></table>	Address	Street	5101 Cammack Dr.	City	Bethesda	State/Territory	Maryland	Zip	20816	Country	United States
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Contact Phone Number	3013253305											

Applicant Education

BA/BS From	Georgetown University
Date of BA/BS	May 2018
JD/LLB From	Georgetown University Law Center
	https://www.nalplawschools.org/employer_profile?FormID=961
Date of JD/LLB	June 5, 2024
Class Rank	School does not rank
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	No
--------------------------------------	-----------

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Borchert, John
John.Borchert@usdoj.gov
Ernst, Daniel
ernst@law.georgetown.edu
202-662-9475

Chafetz, Josh
josh.chafetz@georgetown.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

AIDAN DELANEY

(301) 325-3305

515 9th St. NW, Washington D.C. 20004

amd314@georgetown.edu

June 12, 2023

The Honorable Juan R. Sanchez
United States District Court for the Eastern District of Pennsylvania
601 Market St.
Philadelphia, PA 19106

Dear Judge Sanchez,

I am a D.C. native, a rising third-year student at the Georgetown University Law Center, and am writing to apply for a 2024-2025 term clerkship in your chambers. As an aspiring prosecutor, the social function of a lawyer has long been the most appealing aspect of a legal career to me, and the courtroom an arena designed to protect ourselves against our worse impulses. I am eager to better understand how competing legal arguments are resolved in the courtroom, and clerking will enable me to learn how to present successful and compelling cases in this setting. I would cherish the opportunity to observe the decision-making process of such an esteemed judge, and I am confident that my research and writing abilities will enable me to contribute to your chambers.

Through my academic experiences, I have developed strong legal research and writing skills that have prepared me to perform at a high level as a clerk. In law school, I have continued to improve my research and writing abilities. In my first year, I composed a comprehensive research memo on the Americans with Disabilities Act, as well as an appellate brief on a Fourth Amendment clothing exception to its prohibition of warrantless home entries. As part of the latter assignment, I detailed the contours of the circuit split, and persuasively advocated for the 11th Circuit to reject the exception. More recently, in a Separation of Powers seminar, I wrote a paper on Presidential soft power in the public sphere, and its capacity to claim political authority that appears legitimate, but offends the constitutionally enumerated separation of powers arrangement.

I have successfully applied my research and writing abilities in a variety of professional legal settings. At the U.S. Attorney's Office, I collected and briefed three years of a defendant's relevant public statements as part of a contempt of Congress case. Additionally, I contributed case law research and participated in drafting two successful evidentiary motions in a civil rights case against a transit police officer for unlawfully beating an unarmed metro rider: a motion *in limine* to exclude the victim's arrest record, and a response to a motion to suppress the defendant's record-history of violent on-duty behavior. Separately, as a Research Specialist for Professor Sara Rosenbaum, I composed a historical brief detailing Congressional rationale for rejecting a 1981 Medicaid block grant proposal. I utilized the Congressional Archives to identify key pieces of legislation, committee reports, and source documents in the congressional record to demonstrate the 97th Congress conceived of a private, legal right to healthcare.

Thank you for your time and consideration. I am eager to be back in a courtroom, and to deepen my understanding of effective trial practice in an environment where I am expected to take on significant responsibilities. You will find my resume, writing sample, transcripts, and letters of recommendation attached. In the meantime, please let me know if there is anything else that I could provide you with.

Sincerely,

Aidan Delaney

AIDAN DELANEY

(301) 325-3305

515 9th St. NW, Washington D.C. 20004

amd314@georgetown.edu

EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER

Juris Doctor, GPA: 3.63

Activities: American Constitution Society

Washington, DC

Expected May 2024

GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

First-year J.D. coursework completed

Activities: Human Rights Law Society, Student Health Law Association, Criminal Law Society

Washington, DC

2021 – 2022

EMORY UNIVERSITY (Candler School of Theology)

Master's in Theological Studies, with concentrations in Ethics and Modern Religious Thought

Honors: Master of Theological Studies Scholarship, Omicron Delta Kappa Honor Society, Pitts Library Fellow

Atlanta, GA

May 2020

GEORGETOWN UNIVERSITY

Bachelor of Arts in English and Government, with a minor in Theology

Honors: Martha M. Swanson Award for Outstanding Senior Leader, Lannan Poetry Fellowship

Activities: Chair of Advisory Board for Clubs Sports, Co-Chair of 2018 Senior Class Fund, Club Soccer President

Washington, DC

May 2018

EXPERIENCE

DEPARTMENT OF JUSTICE

Legal Intern, Appellate Section, Criminal Division

Washington, DC

Sept. 2023 – Dec. 2023

MORGAN, LEWIS & BOCKIUS LLP

Summer Associate

New York, NY

May 2023 – July. 2023

UNITED STATES ATTORNEY'S OFFICE

Legal Intern, Fraud and Public Corruption Unit, Criminal Division

Washington, DC

Sept. 2022 – Dec. 2022

- Assisted in composing closing argument materials for a bribery and conspiracy case; drafted in limine motions and responses to motions to suppress evidence in multiple civil rights cases; provided research for insider trading sentencing, collected digital evidence for a contempt of Congress case

GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Research Assistant, Sara Rosenbaum, Professor of Health Law and Policy

Washington, DC

June 2022 – Aug. 2022

- Conducted review of congressional records and legislation concerning Medicaid block grant proposals in Congress for an amicus brief in support of the respondent in the *Health and Hospital Corp. v. Talevski* Supreme Court case

DEPARTMENT OF HOMELAND SECURITY

Information Governance Summer Clerk, Immigration and Customs Enforcement

Washington, DC

June 2022 – Aug. 2022

- Reviewed and advised on legal issues associated with pending requests to release otherwise private information under the Freedom of Information Act; drafted legal memorandum pertaining to case law surrounding litigation of excessively burdensome and vague Freedom of Information Act requests

ARGOPOINT LLC

Associate Consultant, Legal Management Consulting

Boston, MA

Jan. 2021 – Aug. 2021

- Conducted analysis and review of Fortune 500 corporate legal departments, including benchmarking, legal operations optimization, outside counsel assimilation, change management, and strategic planning; developed matter management and assignment governance frameworks

CANDLER SCHOOL OF THEOLOGY (Emory University)

Research Assistant, Dr. John Snarey, Franklin Parker Professor of Ethics

Atlanta, GA

Oct. 2018 – June 2020

- Performed archival research, conducted qualitative analysis on 200 profiles from William James' *Varieties of Religious Experience*, and constructed data approach quantify qualitative evaluations of profiles

STUDENTS OF GEORGETOWN, INC. (The Corp)

Corp Board of Directors, Executive Director of More Uncommon Grounds Coffee Shop

Washington, DC

June 2015 – May 2018

- Oversaw daily operations and long-term financial strategy; transitioned company to 'cashless' operations; integrated Accounting and Marketing Departments into each storefront; revised company hiring and training procedures

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Aidan Michael Delaney
GUID: 827672102

Course Level: Juris Doctor

Degrees Awarded:
 Bachelor of Arts May 19, 2018
 Georgetown College
 Major: English
 Major: Government

Transfer Credit:
 George Washington University
 School Total: 31.00

Entering Program:
 Georgetown University Law Center
 Juris Doctor
 Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Fall 2022 -----							
LAWJ	128	08	Criminal Procedure	2.00	B+	6.66	
			Brent Newton				
LAWJ	1491	12	Externship I Seminar		NG		
			(J.D. Externship Program)				
			John Thorlin				
LAWJ	1491	83	~Seminar	1.00	A-	3.67	
			John Thorlin				
LAWJ	1491	85	~Fieldwork 3cr	3.00	P	0.00	
			John Thorlin				
LAWJ	1711	05	Separation of Powers	3.00	A-	11.01	
			Seminar: Hot Topics in Scholarship				
			Josh Chafetz				
LAWJ	215	08	Constitutional Law II:	4.00	A-	14.68	
			Individual Rights and Liberties				
			Gary Peller				
In Progress:							
			EHrs	QHrs	QPts	GPA	
Current			13.00	10.00	36.02	3.60	
Cumulative			44.00	10.00	36.02	3.60	
Subj	Crs	Sec	Title	Crd	Grd	Pts	R
----- Spring 2023 -----							
LAWJ	015	05	American Legal History	3.00	A	12.00	
LAWJ	1196	08	Religion, Morality and	2.00	A	8.00	
			Contested Claims for				
			Justice Seminar				
LAWJ	165	07	Evidence	4.00	B+	13.32	
LAWJ	361	17	Professional	2.00	B+	6.66	
			Responsibility				
LAWJ	455	01	Federal White Collar	4.00	A-	14.68	
			Crime				
----- Transcript Totals -----							
			EHrs	QHrs	QPts	GPA	
Current			15.00	15.00	54.66	3.64	
Annual			28.00	25.00	90.68	3.63	
Cumulative			59.00	25.00	90.68	3.63	
----- End of Juris Doctor Record -----							

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing in support of the application of Aidan Delaney for a judicial clerkship.

I worked closely with Aidan between September 2022 and December 2022 when he was a legal intern with my section at the U.S. Attorney's Office for the District of Columbia. Aidan provided excellent support for a bribery trial that resulted in convictions on all counts. He researched novel legal issues that were raised throughout the trial, often on short notice or after hours. And he helped me to marshal the documentary evidence in the case into an effective presentation for closing argument. This required a keen understanding of the facts in our case and the elements of each crime that needed to be proven to the jury. Throughout the trial, Aidan worked late many evenings and he did not hesitate to help out where needed.

Aidan also worked with me in preparing for sentencing in an insider trading case. He combed through all publicly available information for insider trading cases nationwide and identified cases with similar facts in which the defendant was sentenced to a period of incarceration. I included Aidan's compilation of those insider trading cases in my submission to the judge recommending incarceration for the defendant in our case.

I have supervised innumerable interns over the past twenty years with the Department of Justice. Aidan stands out for his willingness to work hard while always keeping a positive attitude. I expect he will enjoy great success in the practice of law. And I hope you will give his application strong consideration.

Sincerely,
John W. Borchert
Assistant United States Attorney
United States Attorney's Office
for the District of Columbia

John Borchert - John.Borchert@usdoj.gov

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write in support of Aidan Michael Delaney's application for a clerkship in your chambers. I know Mr. Delaney principally from American Legal History, a twenty-six-student, lecture-and-discussion course he took from me in the Spring 2023 semester. We also spoke several times, about his education and career plans, as well as the course, when he came to office hours.

American Legal History is a political history of legal institutions in the United States during the twentieth century, with an emphasis on administrative law, presidential power, and the legal profession. Its central argument is that the legal profession played a central role in subjecting administrative agencies and presidential acts to a particular version of the rule of law, which looked to court-like procedures, if not courts themselves, to keep official discretion in check. The exam, which was the principal basis for Mr. Delaney's grade, presented him with essays on two topics we did not cover in class. He had to identify and account for similarities with and differences from the topics we did discuss, much as he would have to compare hypothetical facts those of assigned cases in an "issue-spotting" exam in a doctrinal course.

I have just reread Mr. Delaney's answer, for which he received an A. It shows that he not only mastered the historical interpretations and much factual detail but also made them his own. In answering the first question, devoted to "Blue Sky laws," by which the states regulated the substance of securities offerings before the New Deal. He recognized that courts deferred to Blue Sky officials only after legislators revised the first statutes to substitute the word "fraud," with a familiar, common-law meaning, for the vaguer word "fair" and administrators revised their proceedings to approximate judicial procedure more closely. He nicely envisioned how the lawyers who founded so-called "Washington law firms" after World War II might have responded to a conservative columnist's complaint that they were just rushing to get whatever fell from the pockets upended by bureaucratic regulation. And Mr. Delaney displayed an unusually broad and detailed command of the course when discussing the exam's second, biographical question, on a female tax lawyer active from 1933 through 1965.

That might not suffice for me to opine on Mr. Delaney's ability to unravel complicated legal matters, but it does allow me to say confidently that he has an unusual ability to assimilate a great deal of unfamiliar information and explain its implications for novel situations clearly and succinctly. As I discovered in office hours, he is as thoughtful and reflective a person as you would infer from his successfully pursuit of a master's degree in Theology at Emory University. I recommend him to you highly.

Sincerely,

Daniel R. Ernst
Carmack Waterhouse Professor of Legal History
202.662.9475

Daniel Ernst - ernst@law.georgetown.edu - 202-662-9475

Georgetown Law
600 New Jersey Avenue, NW
Washington, DC 20001

June 11, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write this letter in enthusiastic support of Aidan Delaney's application to be your law clerk. Aidan was my student in a fall 2022 seminar titled "The Separation of Powers: Hot Topics in Scholarship," in which he performed very well.

As its name suggests, the seminar examines live controversies in the separation of powers through the lens of recent scholarship in both law and political science. Aidan was an active and insightful participant in class discussion, both on the week that he was assigned to "present" one of the readings (by both summarizing its main points and raising probing questions to guide class discussion) and on the weeks that he was not presenting. It was clear that he had always done the reading carefully and thoughtfully. His comments in class discussion were smart and sophisticated, and they generally moved the conversation forward in interesting and important ways.

For his final paper, Aidan wrote on the interaction between presidential popularity and presidential power. He argued both that the institutional features of the presidency can strengthen the public image of the individual president and that presidential popularity strengthens the hand of the president in his conflicts and negotiations with the other branches. He argued that this self-reinforcing cycle is worrisome insofar as it presents the potential for continuing presidential aggrandizement.

The paper was well-argued and very well-written. The thesis was not the most original or the most nuanced in the class, and I could have wished that Aidan had done more research beyond the readings assigned in the seminar. Nonetheless, it was a very solid paper, and combined with his class participation, earned him an A- for the course.

A glance at Aidan's transcript makes clear that his performance in my seminar was no outlier. After transferring to Georgetown from George Washington, he has consistently performed well. I should also add that Aidan is a tremendously nice person—warm, friendly, and both well-liked and well-respected by faculty and his fellow students alike. I have no doubt that he works very well in collaborative settings.

Indeed, I am convinced that Aidan has both the tools and the drive to be an asset to any chambers that hires him. I urge you to do so!

If you have any questions or would like any more information, please do not hesitate to call or email me.

Yours,

Josh Chafetz
Professor of Law

Josh Chafetz - josh.chafetz@georgetown.edu

AIDAN DELANEY

(301) 325-3305

515 9th St. NW, Washington D.C. 20004

amd314@georgetown.edu

Writing Sample

The attached writing sample is a brief written for my Fundamentals of Lawyering (Legal Writing) course in Spring 2022. I was required to draft a trial brief on behalf of the defendant, Stephanie Michaels, arguing against a proposed “clothing exception” to the Fourth Amendment. There is a circuit split on the issue, and the Eleventh Circuit had not ruled to accept or reject a clothing exception. This writing sample is in its original format with no editing, except for removal of the cover sheet. I have included a brief Statement of Facts and Conclusion sections to provide relevant context.

Aidan Delaney
Writing Sample

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF DEFENDANT MICHAEL'S
MOTION TO SUPPRESS EVIDENCE

Defendant, Stefanie Michaels, respectfully requests that the Court reject the proposed Fourth Amendment “clothing exception” as justification for warrantless entry into her home.

INTRODUCTION

This is a case about privacy - the right to be left alone from the government, the beginning of freedom and liberty in our democracy. To some, it is the most comprehensive and highest valued right that we enjoy. It is a basic principle in our Constitution that searches and seizures in a home without a warrant are unreasonable. Although there are certain exigent circumstances where public interest demands flexibility, the situation before us does not qualify under any manner of exigent exception. For the Court to carve out an additional “clothing exception” as advocated by our opposition, the result would be a gratuitous expansion of police power to invade the home, and an imperious subordination of a citizen's right to privacy.

STATEMENT OF FACTS

On a balmy, 50 degree evening on December 8, 2021, two officers responded to an emergency call reporting an explosion-like sound in the isolated Mountainview community. *Greenfield Road Station - KGAELLIJ82*, Weather Underground (Dec. 8, 2021), <https://www.wunderground.com/dashboard/pws/KGAELLIJ82/graph/2021-12-8/2021-12-8/daily>; Trinity Roddar, *Arrest Worksheet* (Dec. 14, 2021) [herein: *Worksheet*]. Upon arriving, the officers encounter Stefanie Michaels and her partner outside her home. *Worksheet, supra*. Due to the surrounding scene, the officers determined that there was probable cause to place Ms. Michaels under arrest, and promptly did so without advancing towards her home. *Worksheet,*

Aidan Delaney
Writing Sample

supra. The officers noticed an unpaved trail led to their car, and determined that Ms. Michaels attire – a bikini top, pants, and slipper socks – was inappropriate for the time of year, and the exercise of getting to their car. Photograph of bikini top and slipper socks, *in* Photo File #21509-1 / SM (2021); Worksheet, *supra*. Without receiving Ms. Michaels’s consent, an officer entered her home to retrieve ancillary clothing, whereupon the officer saw a gun in plain sight and confiscated it. Worksheet, *supra*.

ARGUMENT

I. The Court should not adopt the “clothing exception” as justification for a warrantless search of a home because doing so would endorse a position that subordinates the privacy and sanctity of the home to police power.

At the very core of the Fourth Amendment stands the right of a person to retreat into their home and be protected from unreasonable government intrusion. *See Payton v. New York*, 445 U.S. 573, 100 S. Ct. 1371 (1980); *see Vale v. Louisiana*, 399 U.S. 30, 90 S. Ct. 1969 (1970). While warrantless searches and seizures in a home are presumptively unreasonable, this prohibition is not absolute, and the Supreme Court has acknowledged four exigent circumstances that justify the warrantless search of a home: the hot pursuit of a felon, the imminent destruction of evidence, the need to prevent a suspect’s escape, or the risk of danger to the police or to other persons inside or outside the dwelling. *See Minnesota v. Olson*, 495 U.S. 91, 101, 110 S. Ct. 1684 (1990). Circuits are split as to whether a “clothing exception” applies to the Fourth Amendment, where warrantless searches of homes are justified when officers determine that the arrestee’s partially clothed status poses a substantial risk of injury. A minority of Circuits have endorsed this posture, while the majority have either rejected this approach out of deference to the primacy of the Fourth Amendment’s protection of privacy, or have simply not been challenged with the exception.

Aidan Delaney
Writing Sample

The so-called “clothing exception” is endorsed by a minority of Circuits and provides justification for an officer to take reasonable steps – including warrantless intrusion of one’s home - to address the safety of the arrestee in circumstances where their lack of clothing presents a substantial risk of injury. *see United States v. Gwinn*, 219 F.3d 326 (4th Cir. 2000); *see United States v. Clay*, 408 F.3d 214 (5th Cir. 2005).

In *Gwinn*, the Fourth Circuit ruled that officers were justified in re-entering Gwinn’s home after the arrest because Gwinn was shirtless and only wearing jeans at the time, which presented substantial, foreseeable risk of physical injuries and chill at nighttime during processing. The Fourth Circuit reasoned that this risk superseded the limited degree of intrusion represented by the reentry and acquisition of clothes, particularly given the officer’s warrant to enter the home to execute the arrest. *United States v. Gwinn*, 219 F.3d at 333; *see United States v. Di Stefano*, 555 F.2d 1094 (2d Cir. 1977) (after making arrest, an officer has duty to find clothing for partially-clothed arrestee or to permit arrestee to do so); *see also United States v. Butler*, 980 F.2d 619 (10th Cir. 1992) (Court holds that warrantless entry to acquire shoes for arrestee is justified when officers notice broken glass or other serious health risk in area).

Similarly in *Clay*, where police obtained a warrant to arrest Clay for violating his parole, the Fifth Circuit ruled that warrantless reentry into Clay’s home to acquire adequate footwear subsequent to the arrest was justified in the context of a parolee arrest. The Court cited Clay’s diminished privacy expectations due to his status as a parolee – a station in society where privacy rights operate between an ordinary citizen and an incarcerated convict – as a factor in their determination that the reentry was justified. *United States v. Clay*, 408 F.3d at 218.

The majority of circuits have either not considered a “clothing exception” or have explicitly declined to endorse a “clothing exception”. Of the circuits that have denied a “clothing

Aidan Delaney
Writing Sample

exception”, the Sixth and Ninth Circuits have explicitly rejected the notion that the arrestee’s partially clothed status rises to the constitutional magnitude necessary to justify a nonconsensual, warrantless police intrusion of the home. *See United States v. Whitten*, 706 F.2d 1000 (9th Cir. 1983); *see United States v. Kinney*, 638 F.2d 941 (6th Cir. 1981).

In *Kinney*, where officers arrested Kinney in an unbuttoned shirt outside his apartment, the Sixth Circuit ruled that warrantless entry into Kinney’s home was unconstitutional because the arrestee made neither a personal request to secure additional clothing nor consented to the officer’s entry into his home. The Sixth Circuit noted that the government has no right to search a dwelling when an arrest is performed outside of it. *United States v. Kinney*, 638 F.2d at 943; *see Vale v. Louisiana*, 399 U.S. 30, 90 S. Ct. 1969 (1970). The Court resolved that warrantless intrusion of the home for the purpose of securing clothes is only justified when requested or consented to by the arrestee, and the simple inadequacy of an arrestee’s clothing, as determined by the arresting officers, cannot establish an exigent circumstance. *Id.* at 945.

In *Whitten*, the Ninth Circuit concluded that, despite Whitten only wearing underwear, officers were not authorized to conduct a warrantless search of his home without a specific request or his consent. The Ninth Circuit noted that if the search of a house is to be upheld as incident to an arrest, the arrest must take place inside the house. *United States v. Whitten*, 706 F.2d at 1016. at 1016; *see Vale v. Louisiana*, 399 U.S. 30, 90 S. Ct. 1969 (1970). The Ninth Circuit reinforced that unless the arrestee consents to the search or makes a specific request for clothes, inadequate clothing does not justify warrantless searches for arrests executed outside of the home, or searches subsequent to the arrest. *Id.* at 1017.

This Eleventh Circuit Court defines exigent circumstances as those that demand an immediate response, particularly where there is danger to human life such that protection of the

Aidan Delaney
Writing Sample

public becomes paramount. *United States v. McGough*, 412 F.3d 1232, 1238; *see United States v. Holloway*, 290 F.3d 1331, 1334 (11th Cir. 2002). In *McGough*, the Court ruled on a “community caretaking” exception, a scenario of the same magnitude as the “clothing exception”. Here, officers detained McGough outside his home, and upon noticing his barefoot daughter also outside, cited a community caretaking exigency to justify entering the home to retrieve shoes for her. *United States v. McGough*, 412 F.3d at 1236. The Court accepted the community caretaking exception to the Fourth Amendment, but denied its application in these circumstances because there was no immediate threat, or potential danger to human life. *Id.* at 1239. It is within these ambits that this Court should rule on the proposed “clothing exception”.

Given the facts before us, the Eleventh Circuit should deny the clothing exception, thereby affirming its priority to uphold the Fourth Amendment’s protection of privacy of the home over the expansion of police authority. Ms. Michaels attire on a balmy 50 degree night does not rise to the level of concern set by *Olson*, where evidence or public safety is at risk. If a person can dress themselves free from the dictates of their parents, it makes sense that they should be free from government fashion directives. At most, officers could have given Ms. Michaels the option of retrieving additional clothing, but at no point should they have the discretion to dress a capable adult.

The case of Ms. Michaels is not contextually similar to *Gwinn* or *Clay*. Where circuits upheld the “clothing exception”, they cited two contributing factors: the officers had already been in the dwelling with a warrant, and the arrestee’s parolee status. At no point prior to Ms. Michaels’ arrest had officers entered her home. The initial violation of Ms. Michael’s home was not a sanctioned government activity, but a gratuitous invasion upon her most private space. Moreover, as an ordinary citizen, Ms. Michaels retains the right to control who enters her home.

Aidan Delaney
Writing Sample

If the “clothing exception” is affirmed, this foundational civil liberty will be reduced to a secondary concern, imperceptible except when expedient for police.

By prioritizing Fourth Amendment protection of privacy over warrantless government intrusion, the Eleventh Circuit’s precedent is entirely consistent with Supreme Court jurisprudence. Our Constitution recognized that privacy is more than just a right, but an inherent human condition. Protecting the privacy of the home sustains the spirit of this sentiment most acutely. The solitude of a home is often solemn, sometimes isolating, but a fact of life; it is a repose, a haven from a world that we do not always feel in harmony with. The opposition seeks to present this case as a conflict between privacy and security, but this is a false dichotomy. In fact, a balance has already been struck. In lockstep with the Supreme Court, the Eleventh Circuit has already carved out exceptions for warrantless searches. To venture into legal territory with no authoritative precedent – to risk violating a fundamental human right - demands intense scrutiny and deep reflection. Do stocking feet endanger human life and public safety to such an extent that they demand an immediate, violative response? I suggest not.

CONCLUSION

For the above reasons, the Court should reject the “clothing exception” to the Fourth Amendment.

Applicant Details

First Name	Catherine
Middle Initial	G
Last Name	Dema
Citizenship Status	U. S. Citizen
Email Address	cdema@pennlaw.upenn.edu
Address	<div>Address Street 201 S. 25th St. Apt. 224 City Philadelphia State/Territory Pennsylvania Zip 19103 Country United States</div>
Contact Phone Number	8163059935

Applicant Education

BA/BS From	William Jewell College
Date of BA/BS	May 2021
JD/LLB From	University of Pennsylvania Carey Law School
	https://www.law.upenn.edu/careers/
Date of JD/LLB	May 20, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Journal of Law and Social Change
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	No
--------------------------------------	----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Rudovsky, David
drudovsk@law.upenn.edu
215-898-3087

Harris, Jasmine
jasmineeharris@law.upenn.edu
(917)405-8910

Lee, Robert
roblee@vccrc.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.